

**C-1**

**BOARD OF TECHNICAL REGISTRATION**

Title 4, Chapter 30

**Amend:** R4-30-102, R4-30-201, R4-30-202, R4-30-204, R4-30-247, R4-30-301,  
R4-30-301.01



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 14, 2024

**SUBJECT: BOARD OF TECHNICAL REGISTRATION**  
Title 4, Chapter 30

**Amend:** R4-30-102, R4-30-201, R4-30-202, R4-30-204, R4-30-247,  
R4-30-301, R4-30-301.01

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### **Summary:**

This regular rulemaking from the Board of Technical Registration (Board) seeks to amend seven (7) rules in Title 4, Chapter 30, Articles 1-3 related to General Provisions, Registration Provisions, and Regulatory Provisions, respectively. Specifically the Board is proposing the following amendments to its rules which are outlined in more detail in Section 6 of the Board's Notice of Final Rulemaking Preamble:

- **R4-30-102:** The Board proposes to amend R4-30-102(2) to replace the requirement that a parallel inspector provide a signed affidavit, requiring a notary, with a less burdensome requirement to provide a signed affirmation, which does not require a notary.
- **R4-30-247(C)(4):** Clarify that a home inspector applicant need only provide a detailed explanatory statement regarding disciplinary action, license denial, or a conviction if it occurred within the last five years immediately preceding the application. Currently, applicants who have criminal/disciplinary history, no matter how old, must go before the Board for consideration of their application.

- **R4-30-301.01:** Propose to move language regarding the Home Inspector Pool and Spa Standards from A.A.C. R4-30-247(B) to A.A.C. R4-30-301.01 as the standards are directly related to the professional conduct of home inspectors.
- **R4-30-301.01(A):** Propose to update the Standards of Professional Practice adoption date and reference the most current standards. The standards currently referenced are over 20 years old. By adopting the new standards, the Board's Practice Act will align with contemporary industry standards. In light of this, the Board wishes to adopt through incorporation the most current home inspector standards adopted on October 27, 2023.
- **R4-30-301.01(B):** Add Section (5) stipulating that a home inspector cannot perform or offer to perform a home inspection for a client while also acting as the client's real estate agent or broker. Board member and home inspector committee members have opined that a home inspector acting as both a home inspector and real estate professional for the same home buying client is a conflict of interest and of concern for public health, welfare, and safety.
- **R4-30-201 & R4-30-202:** Add additional language clarifying that an applicant for professional registration and in-training designation need only provide a detailed explanatory statement regarding disciplinary action, license denial, or a conviction if it occurred within the last five years immediately preceding the application.
- **R4-30-201, R4-30-202 & R4-30-301:** Board plans to move onto an e-licensing system at the beginning of 2024. This will necessitate all applicants and registrants submit and maintain a current email with the Board for both access to the Board's e-licensing platform and efficient communication with the Board. Therefore, the Board requires an amendment to its rules so that all applicants and registrants must submit and keep current an email with the Board.
- **R4-30-202 & R4-30-204:** To be consistent with national standards, the Board would like to reduce the need for Board approval for exam authorization to take the engineer and land surveyor fundamental examinations and allow 'auto-approval' for fundamental examination authorization applicants who meet the Board's current auto-approval criteria.
- **R4-30-204:** The examination national councils in which the Board holds membership removed terminology regarding 'rolling-clocks' for exam application closure. The term 'rolling-clock' indicates a period of time in which an applicant's exam results remain acceptable. To be consistent with national standards and eliminate unnecessary limitations on acceptable test results, the Board asks to amend its rules regarding 'rolling clocks.'

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Board cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

According to the Board, the amendments will benefit newly licensed home inspectors, parallel inspectors, and consumers.

Newly licensed home inspectors and parallel inspectors will benefit from reduced regulatory burdens that cost time and money. Consumers will benefit from updated 20-year-old Home Inspector Professional Standards with new standards that are current with contemporary industry standards. Businesses that perform home inspections and home inspections schools may have an initial upfront cost to update home inspection software and training procedures to conform to the new standards.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

According to the Board, no other methods of achieving the updated minimum standards are available beyond what the Board has provided in this rule package.

6. **What are the economic impacts on stakeholders?**

According to the Board, the amendment to R4-30-102 may have a positive economic impact for newly licensed home inspectors by reducing their wait time for signed parallel inspector affirmations and increasing the number of available parallel inspectors, and thereby allowing them to begin their home inspection careers earlier. Additionally, parallel inspectors would no longer need to seek out and pay for notary services and would no longer have to wait three years to perform parallel inspections, an economic benefit to the parallel inspector, after receiving disciplinary action.

The amendment to R4-30-247 may have a positive economic impact for newly licensed home inspectors with older past offenses because they may no longer have to wait for Board review of their applications and therefore begin their home inspection careers earlier.

The amendment and additions to R4-30-301.01 will benefit consumers. Referencing newly adopted standards that are contemporary with current industrial standards and adding additional language stipulating a home inspector cannot offer a home inspection to a client while also acting as the client's real estate professional will help the Board in its mission to protect the health, safety, and welfare of the public.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Board indicates, in response to comments regarding the new home inspector standards, changes were made to the rule language that led to the Board filing a Notice of Supplemental Proposed Rulemaking. The Board does not indicate any changes between the Notice of Supplemental Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

As outlined above, the Board indicates it received numerous public comments related to this rulemaking regarding the proposed changes to the new home inspector standards. In response to these comments, the Home Inspector Rules and Standards Committee reviewed the comments for any necessary changes to the rules as a result of the comments. Ultimately, after reviewing the comments, the Board did make changes to the rule language and filed a Notice of Supplemental Proposed Rulemaking. Copies of the comments are included with the final materials for the Council's consideration. Council staff believes the Board has adequately responded to comments on the proposed rules.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Board indicates the proposed amended rules do not require issuance of a permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Board indicates there is no federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the Board seeks to amend seven (7) rules in Title 4, Chapter 30, Articles 1-3 related to General Provisions, Registration Provisions, and Regulatory Provisions, respectively. Specifically, this rulemaking proposes to clarify and update licensing requirements and procedures, reorganize rule language for clarity, and update standards for practice.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



**State of Arizona**  
**BOARD OF TECHNICAL REGISTRATION**

1110 W. Washington Street, Suite 240, Phoenix, Arizona 85007 (602) 364-4930 FAX: (602) 364-4931 <https://btr.az.gov/>

2/15/2024

Nicole Sornsin,  
Chairperson Governor's Regulatory Review Council  
Arizona Department of Administration 100 N. 15th Ave, Suite 302  
Phoenix, AZ 85007

RE: BTR Rulemaking for Title 4, Chapter 30, Articles 1-3 (regular rulemaking)

Dear Ms. Sornsin,

Enclosed is the rule package identified above which I am submitting, as the Designee of the Executive Director of the State Board of Technical Registration, for approval by the Governor's Regulatory review Council (Council) under A.R.S. § 41-1052.

The following information is provided for your use in reviewing the enclosed rule package pursuant to R1-6-201.

A. The Close of the Record:

The close of the record was December 31, 2023. Submission of the rule is within the 120 days allowed for final rulemaking.

B. Whether the rulemaking relates to a five-year review report and if applicable, the date the report was approved by the Council:

The rulemaking does not relate to a five-year review report.

C. Whether the rule contains a new fee and, if it does, citation of the statute expressly authorizing a new fee:

The rulemaking does not include a new fee.

D. Whether the rule contains a fee increase:

The rulemaking does not contain a fee increase.

E. Whether an immediate effective date is requested for the rule under ARS 41-1032:

No immediate effective date is requested.

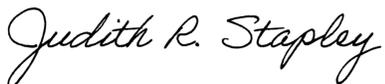
F. I certify that the agency did not reference any study relevant to the rule package.

G. I certify that the Board, as the preparer of the economics, small business, and consumer impact statement, has notified the Joint Legislative Budget Committee that no new full-time employees are necessary to implement and enforce the rules.

H. A list of all items enclosed:

- a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;
- b. Economic, Small Business, and Consumer Impact Statement;
- c. The written public comments received by the agency concerning the proposed rule package and relevant written minutes of board meetings and home inspector rules and standards committee meetings regarding the rule package.
- d. A copy of the general and specific statutes authorizing the rule, including relevant statutory definitions;
- e. The home inspector standards of practice and pool and spa standards incorporated by reference;

Sincerely,

A handwritten signature in black ink that reads "Judith R. Stapley". The signature is written in a cursive, flowing style.

Judith Stapley, Executive Director

**NOTICE OF FINAL PROPOSED RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected</u></b>	<b><u>Rulemaking Action</u></b>
R4-30-102	Amend
R4-30-201	Amend
R4-30-202	Amend
R4-30-204	Amend
R4-30-247	Amend
R4-30-301	Amend
R4-30-301.01	Amend

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

Authorizing statutes: §§ 32-106, 32-111, and 32-121

Implementing statutes: §§ 32-101, 32-122.02

**4. Previous notices that appeared in the *Register* concerning this final rule:**

Notice of Rulemaking Docket Opening: Volume 29, Issue 4. January 2, 2023

Notice of Proposed Rulemaking: Volume 29, Issue 24. June 16, 2023

Notice of Supplemental Rulemaking: Volume 29, Issue 48. December 1, 2023

**5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Kurt Winter, Deputy Director

Address: 1110 W. Washington, Ste. 240., Phoenix, AZ 85007

Telephone: (602) 364-4883  
Fax: (602) 364-4931  
E-mail: Kurt.winter@azbtr.gov  
Web site: www.azbtr.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Agency proposes to amend its rules to replace the requirement that a parallel inspector provide a signed affidavit, requiring a notary, with a less burdensome requirement to provide a signed affirmation, which does not require a notary, in A.A.C. R4-30-102(2). This amendment will expedite the time in which a home inspector applicant may apply to the Board and save parallel inspectors the time and money required to have an affidavit notarized. Additionally, the agency proposes to amend its rule to reduce the number of years a home inspector cannot perform a parallel inspection after receiving disciplinary action from the Board from three years to one year, as the industry has opined that three years is excessive and does not help protect the public.

The Agency proposes to add additional language to A.A.C. R4-30-247(C)(4) clarifying that a home inspector applicant need only provide a detailed explanatory statement regarding disciplinary action, license denial, or a conviction if it occurred within the last five years immediately preceding the application. This would reduce, and possibly eliminate, wait time for applicants with denial, conviction, or license denial history over five years old. Currently, applicants who have criminal/disciplinary history, no matter how old, must go before the Board for consideration of their application.

The Agency proposes to move language regarding the Home Inspector Pool and Spa Standards from A.A.C. R4-30-247(B) to A.A.C. R4-30-301.01 as the standards are directly related to the professional conduct of home inspectors.

The Agency proposes to update the Standards of Professional Practice adoption date under R4-30-301.01(A) and reference the most current standards. The standards currently

referenced are over 20 years old. By adopting the new standards, the Board's Practice Act will align with contemporary industry standards. In light of this, the Board wishes to adopt through incorporation the most current home inspector standards adopted on October 27, 2023 (amend R4-30-301.01).

The Agency proposes to add section (5) to R4-30-301.01(B) stipulating that a home inspector cannot perform or offer to perform a home inspection for a client while also acting as the client's real estate agent or broker. Board member and home inspector committee members have opined that a home inspector acting as both a home inspector and real estate professional for the same home buying client is a conflict of interest and of concern for public health, welfare, and safety.

The Agency proposes to add additional language clarifying that an applicant for professional registration and in-training designation need only provide a detailed explanatory statement regarding disciplinary action, license denial, or a conviction if it occurred within the last five years immediately preceding the application. This would match the language the Board proposed for home inspector applicants in its Proposed Rulemaking (amend R4-30-201 and 202).

The Board plans to move onto an e-licensing system at the beginning of 2024. This will necessitate all applicants and registrants submit and maintain a current email with the Board for both access to the Board's e-licensing platform and efficient communication with the Board. Therefore, the Board requires an amendment to its rules so that all applicants and registrants must submit and keep current an email with the Board (amend R4-30-201, 202 and 301).

To be consistent with national standards, the Board would like to reduce the need for Board approval for exam authorization to take the engineer and land surveyor fundamental examinations and allow 'auto-approval' for fundamental examination authorization applicants who meet the Board's current auto-approval criteria (amend R4-30-202 and 204).

The examination national councils in which the Board holds membership removed terminology regarding ‘rolling-clocks’ for exam application closure. The term ‘rolling-clock’ indicates a period of time in which an applicant’s exam results remain acceptable. To be consistent with national standards and eliminate unnecessary limitations on acceptable test results, the Board asks to amend its rules regarding ‘rolling clocks’ (amend R4-30-204).

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

The Board did not conduct a study relevant to the rule(s). Comments from the home inspector industry discussed during the Board’s home inspector rules and standards committee and commenter received from the engineer and architect associations of Arizona lead to the Board’s justification and request to amend its rules.

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

Not applicable.

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

The amendment to R4-30-102 may have a positive economic impact for newly licensed home inspectors by reducing their wait time for signed parallel inspector affirmations and increasing the number of available parallel inspectors, and thereby allowing them to begin their home inspection careers earlier. Additionally, parallel inspectors would no longer need to seek out and pay for notary services and would no longer have to wait three years to perform parallel inspections, an economic benefit to the parallel inspector, after receiving disciplinary action.

The amendment to R4-30-247 may have a positive economic impact for newly licensed home inspectors with older past offenses because they may no longer have to wait for Board review of their applications and therefore begin their home inspection careers earlier.

The amendment and additions to R4-30-301.01 will benefit consumers. Referencing newly adopted standards that are contemporary with current industrial standards and adding additional language stipulating a home inspector cannot offer a home inspection to a client while also acting as the client's real estate professional will help the Board in its mission to protect the health, safety, and welfare of the public.

**10. Changes made to the rules between proposed and final rules including all supplemental notices:**

Name: Kurt Winter, Deputy Director  
Address: 1110 W. Washington, Ste. 240, Phoenix, AZ 85007  
Telephone: (602) 364-4883  
Fax: (602) 364-4931  
E-mail: kurt.winter@azbtr.gov

**11. Summarize the principal comments received from the public and your agency's response to them:**

The principle comments were regarding the new home inspector standards. The agency's response was to have all comments reviewed by the Home Inspector Rules and Standards Committee for any changes based upon the comments. Changes were made and this led to the supplemental rule package.

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

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

Not applicable.

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

Not applicable.

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

No one submitted an analysis to the Board regarding these rules.

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

Added as part of the rulemaking are the following incorporations by reference:

1. Arizona Chapter of American Home Inspectors "Standards of Professional Practice" adopted on October 27, 2023, located under R4-30-301.01(A).
2. Arizona Home Inspector Pools and Spas Standards of Professional Practice adopted on April 25, 2023, located under R4-30-301.01(B).

**14. Specify whether the rule was previously made as an emergency rule:**

The rule was not previously made as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**ARTICLE 1. GENERAL PROVISIONS**

R4-30-102. Home Inspection Definitions

**ARTICLE 2. REGISTRATION PROVISIONS**

R4-30-201. Registration as an Architect, Engineer, Geologist, Landscape Architect, or Land  
Surveyor

R4-30-202. In-training Designation

R4-30-204. Examinations

R4-30-247. Home Inspector Certification

**ARTICLE 3. REGULATORY PROVISIONS**

R4-30-301. Rules of Professional Conduct

R4-30-301.01. Home Inspector Rules of Professional Conduct

## ARTICLE 1. GENERAL PROVISIONS

### R4-30-102. Home Inspection Definitions

The following definitions apply to home inspection requirements in this Chapter:

1. “Parallel Inspection” means a home inspection completed by an applicant during the application process that is supervised by a certified home inspector acting as the Parallel Inspector, in the presence of no more than three other applicants. The applicant shall produce a written report for each Parallel Inspection, which the supervising certified home inspector, serving as the Parallel Inspector, shall review, analyze, correct, and return to the applicant within 10 calendar days after receiving the written report. The Parallel Inspector shall notate and instruct the applicant so that each report meets the Standards of Professional Practice for Arizona Home Inspectors. The applicant shall not perform any fee-paid Home Inspections during this Parallel Inspection period.
2. “Parallel Inspector” means an Arizona Certified Home Inspector who performs parallel inspections for a home inspector applicant so that the applicant can obtain a certification to conduct home inspections. A Parallel Inspector shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding ~~three~~ years-year. The Parallel Inspector shall have been continuously certified by the Board as a Home Inspector for at least three years and shall have conducted at least 250 fee-paid home inspections in the State of Arizona. The Applicant shall provide a signed ~~Affidavit~~ affirmation from the Parallel Inspector affirming that the Parallel Inspector has met this criteria to the Board with the application for certification.
3. “Peer Review” means a home inspection performed alongside a supervising Peer Reviewer in order to comply with the terms of Board ordered discipline. The Arizona Certified Home

Inspector subject to Board ordered discipline shall, at the conclusion of each Peer Review, submit a written Home Inspection Report to the Peer Reviewer for analysis and review. The Peer Reviewer shall notate and instruct the Arizona Certified Home Inspector subject to Board ordered discipline in order for the report to meet the Standards of Professional Practice for Arizona Home Inspectors. The Arizona Certified Home Inspector subject to Board ordered discipline shall not perform any fee-paid Home Inspections during this Peer Review period.

4. “Peer Reviewer” means an Arizona Certified Home Inspector performing peer review inspections for a home inspector subject to Board ordered discipline so that inspector can fulfill the terms of the ordered discipline. A Peer Reviewer shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding three years. The Peer Reviewer shall have been continuously certified by the Board as a home inspector for at least five years and shall have conducted at least 250 fee-paid home inspections in the State of Arizona. The Arizona Certified Home Inspector subject to Board ordered discipline shall provide the Board with a signed ~~Affidavit~~ affirmation from the Peer Reviewer affirming that the Peer Reviewer has met these criterion at the conclusion of each peer review inspection.
5. “Report Checklist Supplement” a tool designed to assist home inspector applicants, parallel inspectors, peer reviewers, application reviewers, enforcement advisory evaluators and certified home inspectors when reviewing or filling out an application for home inspector certification and a home inspection report. The “Report Checklist Supplement” is not a substitute for the current version of the “Standards of Professional Practice.”

## ARTICLE 2. REGISTRATION PROVISIONS

### **R4-30-201. Registration as an Architect, Engineer, Geologist, Landscape Architect, or Land Surveyor**

A. An applicant for registration as an architect, engineer, geologist, landscape architect, or land surveyor shall submit a completed application package for professional registration that contains the following:

1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;
2. Name, residence address, mailing address if different from residence, email and telephone number, of the applicant;
3. Date of birth and social security number of the applicant;
4. Citizenship or legal residence of the applicant;
5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
6. A detailed explanatory statement and documentation, regarding;
  - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction, within five years before the date of application;
  - b. Refusal of any professional or occupational registration, certification, or license to the

- applicant by any state or jurisdiction, within five years before the date of application;
- c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
  - d. Any alias or other name used by the applicant; and
  - e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation, within five years before the date of application.
7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity);
  8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
  9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
  10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
  11. Name, current address, and telephone number of the applicant's current and former employers (the names of companies within the last ten-year period) in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;

12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or more years shall provide the names and address of all immediate supervisors during the most recent ten-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three professional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;
13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
14. Certificate of Experience Report from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record from additional professional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board, but the Board must receive them directly from the reference;
15. Evidence of successful completion, or waiver by the Board, of the applicable fundamentals examination. An applicant for registration who has successfully completed a fundamentals examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original

examination. An applicant seeking professional registration as an engineer, geologist or land surveyor shall pass the applicable fundamentals examination before admission to the professional examination. An applicant seeking professional registration as a geologist may take the fundamentals examination on the same day;

16. Certification that the information provided to the Board is accurate, true and complete; and

17. The applicable fee.

- B.** If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above-referenced time.
- C.** An applicant holding a certificate of qualification issued by one of the national examination councils recognized in R4-30- 203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national examination council contain all the information described in A.R.S. § 32-122.01 and subsection (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to an evaluator deemed qualified by the board and chosen from the pool of enforcement advisory committee members for evaluation. If the application for registration is complete and in the proper form and the Board staff or the evaluator is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in

the field for which the application was filed, the Board staff or evaluator shall recommend that the Board certify the applicant as eligible for registration. If for any reason the Board staff or the evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff and evaluator shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.

- E. The Board may accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member.
- F. The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee.
- G. An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.

**R4-30-202. In-training Designation**

- A. An applicant for in-training designation shall submit an original completed in-training application package that contains the following:

1. Category for which the applicant is seeking an in-training designation
  2. Evidence of successful completion, or waiver by the Board, of the current fundamentals examination in the category ~~and branch, if applicable~~, for which in-training designation is sought;
  3. ~~The applicable fee.~~ Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, within five years before the date of application;
  4. Any alias or other name used by the applicant; and
  5. The information set forth in subsections ~~(B)(1)~~ (B)(2) through (9); ~~and~~
- B.** An examination applicant who wants to sit for a fundamentals examination who does not possess an educational degree recognized by the applicable national council or who is not in the final year of a degree program recognized by the applicable national council shall submit an original completed exam authorization application to the Board, and provide the following:
1. Name of the fundamental examination the applicant wishes sit for;
  2. Name, residence address, mailing address if different from residence, email and telephone number of the applicant;
  3. Date of birth and social security number of the applicant;
  4. Citizenship or legal residence;
  4. ~~Category, and branch of engineering if applicable, for which the applicant is seeking an in-training designation.~~
  5. ~~Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, and any alias or other name used by the applicant;~~
  6. Name, mailing address, years attended, graduation date, major, and type of degree

received from each college, university, or educational institution that the applicant attended;

76. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;

87. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;

98. Certification that the information provided to the Board is accurate, true, and complete.

9. The applicable fees.

C. If otherwise qualified, the Board shall permit an applicant for in-training designation to take the fundamentals examination in the final year of a baccalaureate, masters, or other degree program ~~accepted~~ that is not recognized by the Board applicable national council and accredited in the category for which the application is made. The applicant shall have the application form endorsed by the applicant's college dean or faculty advisor, or, if already a graduate, may arrange to have a final transcript, indicating the degree awarded, sent directly from the registrar to the Board, in lieu of the endorsement.

D. The Board shall permit an applicant ~~for in-training designation~~ without an accredited college degree or who is not in the final year of a degree program recognized by the applicable national council to take the fundamentals examination after submitting to the Board evidence of four years of satisfactory experience or education or both. The applicant shall provide the name, current address, and telephone number of all current and former employers; names of all supervisors and their titles; dates of employment; applicant's title, and a description of the work performed. The applicant shall provide Certificate of Experience Record and Reference Forms to immediate supervisors at present and past employers. The applicant shall ensure the

completed reference forms are submitted to the Board. The applicant shall meet all other requirements of this Section.

#### **R4-30-204. Examinations**

**A. Board Review For Authorization to Test:** Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following information for approval:

1. Name, residence address, mailing address if different from residence, email and telephone number;
2. Date of birth and Social Security number;
3. Proof of citizenship or legal residence;
4. Category, and branch of engineering if applicable;
5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution attended;
6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution attended;
7. Evidence of at least 60 months of required education or experience, or both, in the category for which registration is sought.
  - a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
  - b. Dates of employment;
  - c. Applicant's title;
  - d. Description of work performed; and
  - e. Number of hours worked per week;

8. Names and current addresses of applicant's current and former employers (the names of companies within the last ten year period) in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
9. A release authorizing the Board to investigate the applicant's education and experience;
10. Certificate of Experience Report from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional professional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that the Board receives these Reports directly from the reference;
11. Evidence of successful completion, or waiver by the Board, of the applicable fundamentals examination. An applicant who has successfully completed a fundamentals examination in another state or jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an engineer, geologist, or land surveyor shall pass the applicable fundamentals examination before admission to the professional examination. An applicant for registration as a geologist may take the in-training examination on the same date as the professional examination;
12. Certification that the information provided to the Board is accurate, true, and complete;

and

13. The applicable fees.

14. In addition to the above requirements, an applicant who does not possess education required for direct access to the NCARB Architect Registration Examination (ARE) shall provide the Board with 60 months of a diversity of experience directly related to the practice of architecture and of a character satisfactory to the Board, in each of the following categories, in order to obtain Board authorization to sit for the required registration examination:

- a. Practice Management. The experience obtained in this category shall demonstrate abilities to manage architectural practice, including professional ethics, fiduciary responsibilities, and the regulations governing the practice of architecture. The experience obtained shall focus on issues related to pre-contract tasks including negotiation, human resource management, and consultant development. Applicants shall demonstrate an understanding of and abilities in business structure, business development, and asset development and protection.
- b. Project Management. The experience obtained in this category shall demonstrate abilities to manage architectural projects, including organizing principles, contract management, and consultant management. The experience shall focus on issues related to office standards, development of project teams, and overall project control of client, fee, and risk management. Experience shall demonstrate an understanding of and abilities in quality control, project team configuration, and project scheduling. In addition, the experience shall demonstrate the ability to establish and deliver project services per contractual requirements in collaboration with consultants.

- c. Programming and Analysis. The experience obtained in this category shall demonstrate abilities related to the evaluation of project requirements, constraints, and opportunities. The experience shall focus on issues related to programming, site analysis, and zoning and code requirements and demonstrate an understanding of and abilities in project type analysis, the establishment of qualitative and quantitative project requirements, evaluation of project site and context, and assessment of economic issues.
- d. Project Planning and Design. The experience obtained in this category shall demonstrate abilities to assess objectives related to the preliminary design of sites and buildings. The experience shall focus on issues related to the generation or evaluation of design alternatives that synthesize environmental, cultural, behavioral, technical and economic issues. The experience shall demonstrate an understanding of and abilities in design concepts, sustainability/ environmental design, universal design, and other forms of governing codes and regulations.
- e. Project Development and Documentation. The experience obtained in this category shall demonstrate objectives related to the integration and documentation of building systems, material selection, and material assemblies into a project. The experience shall focus on issues related to the development of design concepts, evaluation of materials and technologies, selection of appropriate construction techniques, and appropriate construction documentation. The experience shall demonstrate an understanding of and abilities in integration of civil, structural, mechanical, electrical, plumbing, and specialty systems into overall project design and documentation.
- f. Construction and Evaluation. The experience obtained in this category shall

demonstrate objectives related to construction contract administration and post-occupancy evaluation of projects. The experience shall focus on issues related to bidding and negotiation processes, support of the construction process, and evaluation of completed projects. The experience shall demonstrate an understanding of and abilities in construction contract execution, construction support services (including construction observation and shop drawing or submittal review), payment request processing, and project closeout. In addition, candidates shall also demonstrate an understanding and abilities in project evaluation of integrated building systems and their performance.

**B.** The Board staff shall review all applications and, if necessary, refer completed applications to an evaluator who meets qualifications approved by the Board for evaluation. If the application for examination is complete and in the proper form and the Board staff or the evaluator is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or evaluator shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.

**C. National Council Examinations:**

1. Applicants ~~for architect, landscape architect, engineer, or land surveyor registration~~ who wish to sit for a fundamental or professional examination, and who have earned an educational degree recognized by the applicable national council may apply directly to the applicable national council to take that exam. Applicants who wish to sit for a

fundamental examination who are in the final year of a degree program recognized by the applicable national council may apply directly to the applicable national council to take that exam.

2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, the Board may recommend them to the applicable national council for entry into the applicable national examination. Applicants shall meet all national council requirements for successful completion of applicable examinations.
3. An applicant for ~~professional~~ examination in any category shall take and pass the examination or at least one division of a multi-divisional examination within one year after receiving approval. If an applicant fails to take and pass an examination within one year after receiving approval, the applicant shall submit a new application for ~~professional~~ examination authorization to the Board.
- ~~4. An applicant who has failed any division of a national multi-divisional examination shall be required to meet the applicable national council's requirements for successful completion of the examination.~~
- ~~5. Examinations administered by a national council of which the Board is a member, or a professional association approved by the Board, shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, reexamination, exam review and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.~~

~~6. The Board shall close an examination authorization file for multi-divisional national examination if the applicant fails to pass all divisions of the applicable examination within five years after first passing any division of the examination unless the Board approves an extension.~~

**D. Board Administered Examinations:**

1. An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, shall take and pass the examination within one year from making the request to test unless the Board grants an extension. The applicant shall communicate all questions and concerns regarding extensions, special accommodations and refunds to the Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date.
2. An applicant who fails to achieve a passing grade on any examination administered by the Board may request reexamination by notifying the Board in writing of the applicant's desire to retake the examination and paying the applicable examination fee. An applicant who retakes any examination shall advise the Board of any changes in the information provided under subsection (A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to retake and pass the Board-administered examination within one year from the request for reexamination. An applicant whose file has been closed and who later wishes to apply for examination shall submit a new examination application package to the Board.

3. An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.
4. An applicant who desires a regrade of a Board administered examination shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will regrade the examination.

**R4-30-247. Home Inspector Certification**

- A. An applicant for certification as a home inspector shall submit an original completed application package that contains the following:
  1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
  2. The information in ~~subsections~~ subsection (B) and (C);
  3. A completed fingerprint card;
  4. Applicable fees;

5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the Arizona State Board for Private Postsecondary Education, or accredited by the Distance Education Accrediting Commission, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of following major content areas:
  - a. Structural Components,
  - b. Exterior,
  - c. Roofing,
  - d. Plumbing,
  - e. Heating,
  - f. Cooling,
  - g. Electrical,
  - h. Insulation and Ventilation,
  - i. Interiors,
  - j. Fireplaces and Solid Fuel-Burning Devices,
  - k. Swimming Pools & Spas, and
  - l. Professional Practice;
6. Evidence of completion of 30 parallel inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection,

the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All time frames promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.

**B.** ~~A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the "Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors," ("Standards") adopted and published by the Board on February 28, 2012. Copies of the Standards are available at the Board's office.~~

**CB.** The application package shall contain the following:

1. Name, residence address, mailing address if different from residence address, email and telephone number;
2. Date of birth and Social Security number of the applicant;
3. Citizenship or legal residence;
4. A detailed explanatory statement regarding:
  - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction, within five years before the date of application;
  - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction, within five years before the date of application;

- c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
  - d. Any alias or other name used by the applicant;
  - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation, within five years before the date of application.
5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies; evidence of having a valid fingerprint clearance card issued pursuant to Title 41, Chapter 12, Article 3.1;
6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity), 4 A.A.C. 30, Supp. 18-2, released June 30, 2018, page 18;
- ~~7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;~~
- ~~8~~7. A release authorizing the Board to investigate the applicant's education, experience, ~~and moral character and repute~~ criminal and disciplinary action history;
- ~~9~~8. Certification that the information provided to the Board is accurate, true, and complete;
- ~~10~~9. Copy of one home inspection report that meets the standards in R4-30-301.01 and reports on at least one immediate major repair as defined in the standards, along with the Report Checklist Supplement; and

~~H~~10. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.

**DC.** The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee or a certified home inspector evaluator for evaluation. If the application is complete and in the proper form, the Board staff, committee, or evaluator is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff, committee, or evaluator shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.

**ED.** A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.

**FE.** A home inspector who places a home inspector certificate on inactive status shall retain

the proof of financial assurance for at least two years after the date that the certificate becomes inactive. A home inspector who fails to retain financial assurance for the required two years is subject to suspension and revocation of the home inspection certificate as per subsection (E). In order to reactivate an inactive home inspection certificate, a home inspector shall provide proof of financial assurance to the Board with the application for reactivation. An inactive home inspector certification shall not qualify for reactivation until proof of financial assurance has been submitted to the Board.

**6E.** In order to reactivate an inactive home inspector certificate, a home inspector who has not practiced as a certified home inspector during that time in another state requiring registration for the previous five years shall take and pass the National Home Inspector Examination.

### **ARTICLE 3. REGULATORY PROVISIONS**

#### **R4-30-301. Rules of Professional Conduct**

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.

4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. If a registrant violates any state or federal criminal statute, the Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
  - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
  - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.

10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at [www.azpls.org](http://www.azpls.org). The Board of Technical Registration adopted the standards on June 15, 2001, and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address, email and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.

17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
  - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
  - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

**R4-30-301.01. Home Inspector Rules of Professional Conduct**

- A. ~~To the extent applicable, a~~ A certified home inspector shall conduct a home inspection in accordance with the “Standards of Professional Practice” adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on ~~January 1, 2002~~ October 27, 2023, the provisions of which are incorporated by reference ~~and on file with the Office of the Secretary of State~~. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available ~~at the office of the Board of Technical Registration~~ electronically on the Board’s website.
- B. A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the “Arizona Home Inspector Pools and Spas Standards of Professional Practice” (“Standards”) adopted by the Board at its April 25, 2023 meeting, the provisions of which are incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of the Standards are available electronically on the Board’s website.
- C. A Certified Home Inspector shall not:
1. Pay, directly or indirectly, in full or in part, a commission or compensation as a referral or finder’s fee to a real estate company, real estate office, real estate broker/sales- person(s), real estate employees or real estate independent contractors in order to obtain referrals for home inspection business. This prohibition includes, but is not limited to, participation in pay-to-play programs by any name (e.g. “preferred vendor,” “approved vendor,” “marketing partner,” “marketing services agreement”);

2. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee related to the correction of defects found within the scope of the home inspection;
3. Perform, or offer to perform, for an additional fee, or have any financial interest in the performance of any repairs to the property that has been inspected by that inspector or the inspector's firm for a period of 24 months following the inspection; or
4. Be accompanied by more than four home inspector candidates while conducting any parallel home inspection.;
5. Perform, or offer to perform, a home inspection on a home while acting in the capacity of a licensed real estate salesperson or licensed real estate broker with any financial interest in the sale of the home.

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**ARTICLE 1. GENERAL PROVISIONS**

**ARTICLE 2. REGISTRATION PROVISIONS**

**R4-30-102, R4-30-247 & R4-30-301.01**

**1. Identification of rulemaking.**

This final rulemaking submitted by the Board of Technical Registration makes amendments as follows:

1. Replace the requirement that a parallel inspector provide a signed affidavit, requiring a notary, with a requirement to provide a signed affirmation, which does not require a notary, in A.A.C. R4-30-102(2).
2. Add additional language to A.A.C. R4-30-247(C)(4) clarifying that a home inspector applicant need only provide a detailed explanatory statement regarding disciplinary action, license denial or a conviction if it occurred only within the last five years immediately preceding the application.
3. Update the Standards of Professional Practice adoption date so the Board references the most current standards in R4-30-301.01(A) and add section (5) to R4-30-301.01(B) stipulating that a home inspector cannot perform or offer to perform a home inspection while also acting as a real estate agent or broker.
4. Add additional language to A.A.C. R4-30-204(C)(1) to include auto-approval of examination authorization for fundamental examinations and strike R4-30-204(C)(6) regarding closing exam authorization applications for multi-divisional examinations.

**a. The conduct and its frequency of occurrence that the rule is designed to change:**

1. Amendment to R4-30-102(2): Parallel inspectors must seek out and pay for notary services to sign affidavits that are given to home inspector applicants.

Every home inspector applicant must produce a signed parallel inspector affidavit, from each parallel inspector, at time of application.

2. Amendment to R4-30-247(C): All applications in which an applicant has indicated they have past disciplinary actions, convictions and/or license denials must go before the Board for a final determination regardless of the age of the said actions, convictions and denials.
3. Amendment to R4-30-301.01(A): All home inspections performed in Arizona must meet the minimum standards referred to under R4-30-301.01. The current referenced standards are over twenty years old.
4. Addition of R4-30-301.01(B)(5): Nothing prevents a home inspector from performing or offering to perform a home inspection while also acting in the capacity of a licensed real estate agent or broker in the same transaction.
5. Amendment of R4-30-204(C): Currently all fundamental examination applicants must apply through the Board for approval prior to sitting for a fundamental examination.

**b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

1. Amendment to R4-30-102(2): The requirement that a parallel inspector provide notarized affidavits to home inspector candidates adds both a time and monetary burden for parallel inspectors to do their duty. It may also hold up a candidate wishing to apply for certification with the Board. This will continue if the rule is not amended.
2. Amendment to R4-30-247(C): Applicants with past disciplinary actions, convictions and license denials must wait for their applications to go before the Board for a final determination, regardless of when the action, conviction or denial occurred. This wait, while within the Board's statutory timeframes, may seem unnecessary to protect the health, safety and welfare of the public and prevent, in the immediate, the applicant becoming certified and earning a living. This will continue if the rule is not amended.

3. Amendment to R4-30-301.01(A): All home inspections performed in Arizona must meet the minimum standards pursuant to R4-30-301.01, which are over twenty years old. This will continue if the rule is not amended.
4. Addition of R4-30-301.01(B)(5): A home inspector currently may perform or offer to perform a home inspection while also acting as a real estate agent or broker as long as the home inspector makes a full disclosure to the client. This will continue if the rule is not amended.
5. Amendment of R4-30-204(C): Arizona is in the minority of states that require board pre-authorization to sit for a national fundamentals examination, requiring applicants to submit an application and application fee to the Board. This will continue if the rule is not amended.

**c. The estimated change in frequency of the targeted conduct expected from the rule change:**

1. Amendment to R4-30-102(2) would reduce the burden, both in time and money, on parallel inspectors having to provide notarized affidavits to home inspector candidates by instead requiring only a signed affidavit. This will also likely expedite the process in which a parallel inspector provides a home inspector candidate with the signed document required for application to the Board.
2. Amendment to R4-30-247(C) would reduce, or possibly eliminate, the number of applications going before the Board for a final determination in regards to an applicant's past disciplinary actions, convictions and license denials, if said occurrences are over five years old.
3. Amendment to R4-30-301.01(A) will effectively update the 20-year old Home Inspector Professional Standards with new standards that are current with contemporary industry standards. All home inspections performed in Arizona must meet the minimum standards pursuant to R4-30-301.01.
4. Addition of R4-30-301.01(B)(5) will allow the Board to discipline a home inspector who performs or offers to perform a home inspection while also acting as a real estate agent or broker.

5. Amendment of R4-30-204(C) will allow a majority of applicants wishing to sit for a fundamentals examination to do so without preauthorization through the Board.

**2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

1. Amendment to R4-30-102(2) will directly affect and benefit parallel inspectors and home inspector candidates.
2. Amendment to R4-30-247(C) will directly affect and benefit home inspector applicants with a history of disciplinary action(s), conviction(s) and/or license denials over five years old.
3. Amendment to R4-30-301.01(A) will directly affect and benefit the public and directly affect certified home inspectors.
4. Addition of R4-30-301.01(B)(5) will directly affect and benefit the public and directly affect and not benefit certified home inspectors who offer both home inspection services and real estate services in the same transaction.
5. Amendment of R4-30-204(C) will directly affect and benefit fundamental exam authorization applicants.

**3. Cost benefit analysis.**

- a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:**

**i. Cost:**

The number of fundamental examination applications the Board will receive after the changes are made will drop, reducing the Board's revenue. The Board

brought in approximately \$28,000 from FE exam applications in fiscal year 2023.

**ii. Benefit:**

These updates will reduce/eliminate steps/approvals for applicants to sit for a fundamentals exam, reducing/eliminating administrative processes for the Board.

**iii. Need for additional Full-time Employees:**

No additional Full-time employees needed.

**b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

None

**4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.**

These changes will reduce burdens for future engineer, geologist, home inspector and land surveyor candidates and will help them enter the workforce sooner.

**5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:**

**a. Identification of the small businesses subject to the proposed rulemaking.**

Small businesses that employ employees that perform home inspections. Small businesses that provide home inspector training.

**b. Administrative and other costs required for compliance with the proposed rulemaking.**

Small businesses that perform home inspections may need to make changes in their business practices to ensure home inspectors conduct home inspections to meet the newly updated minimum standards; this may require up-front costs.

**c. Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:**

**i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;**

Cannot use. There cannot be a less stringent version of the minimum standards; to ensure protection of the public, the standards must be universal.

**ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;**

Cannot use. There are no schedule deadlines in the rules.

**iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**

Cannot use. There cannot be a simplified version of the minimum standards; to ensure protection of the public, the standards must be universal.

- iv. **Establish performance standards for small businesses to replace design or operational standards in the rule; and**

Cannot use. Minimum standards establish performance standards.

- v. **Exempting small businesses from any or all requirements of the rule.**

Cannot use. See answers to i-iv above.

- d. **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Private persons and consumers will benefit from the Board adopting current industrial standards for certified home inspectors as it would help ensure protection of the public. The cost to businesses that perform home inspections and home inspections schools may have an initial upfront cost to updating home inspection software and training procedures to conform to the new standards.

- 6. **Statement of the probable effect on state revenues.**

If R4-30-204(C) is amended; the Board will see a decrease in revenue received for exam authorization applications.

- 7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

No other methods of achieving updated minimum standards are available beyond what the Board has provided in this rule package.

- 8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

The Board did not obtain data on which a rule is based in this rule package.



Kurt Winter <kurt.winter@azbtr.gov>

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**29 A.A.R. 422 (5) to R4-30-301.01(B),**

1 message

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**Edward Padilla** <edward@upcloseinspections.org>  
To: "kurt.winter@azbtr.gov" <kurt.winter@azbtr.gov>

Tue, Jun 20, 2023 at 8:15 PM

To Whom it may concern,

6/20/2023

After reviewing Notice of Rulemaking Docket Opening: 29 A.A.R. 422, January 27, 2023

Specifically "The Agency proposes to add subsection (5) to R4-30-301.01(B), stipulating that a home inspector cannot perform or offer to per[1]form a home inspection while also acting as a real estate agent or broker. Board member and home inspector committee members have opined that a home inspector acting as both a home inspector and real estate professional for the same home buying client is a conflict of interest and of concern for public health, welfare, and safety."

**Proposal:** "The Agency proposes to add subsection (5) to R4-30-301.01(B), stipulating that a home inspector or the company they work for cannot perform or offer to per[1]form a home inspection while also acting as a real estate agent or broker **on a real estate transaction**. Board member and home inspector committee members have opined that a home inspector acting as both a home inspector and real estate professional for the same home buying client is a conflict of interest and of concern for public health, welfare, and safety."

**Reasoning:** The first sentence sounds like an individual can not be a real estate agent or broker while they are a home inspector. The second sentence clarifies that. The first sentence should be clearer. Also, it should also mention the company they work for so the "conflict of interest" is better clarified.

Edward Padilla

Home Inspector #58227

EAC Member

Planning and Zoning Commissioner for Gila County AZ

## STANDARDS OF PROFESSIONAL PRACTICE

### TABLE OF CONTENTS

#### Section Description

1. Introduction
2. Purpose & Scope
3. General Limitations & Exclusions
4. Structural Components
5. Exterior
6. Roofing
7. Plumbing
8. Electrical
9. Heating
10. Cooling
11. Interiors
12. Insulation & Ventilation

Glossary NOTE: Italicized words are defined in the Glossary

#### 1. INTRODUCTION

- 1.1 These Standards define the practice of Home Inspection in the State of Arizona.
- 1.2 These Standards of Practice:
  - A. provide inspection guidelines.
  - B. make public the services provided by private fee-paid *Inspectors*.

#### 2. PURPOSE AND SCOPE

- 2.1 Inspections performed to these Standards shall provide the *client* with a better understanding of the property conditions, as *observed* at the time of the inspection.
- 2.2 *Inspectors* shall:
  - A. before the inspection report is delivered, enter into a written agreement with the *client* or their authorized agent that includes:
    1. the purpose of the inspection.
    2. the date of the inspection.
    3. the name, business address and certification number of the *Inspector*.
    4. the fee for services.
    5. a statement that the inspection is performed in accordance with these Standards.
    6. limitations or exclusions of *systems* or *components* inspected.
  - B. *observe readily accessible installed systems and components* listed in these Standards.
  - C. submit a written report to the *client* which shall:
    1. *describe systems and components* identified in sections 4-12 of these Standards.

Adopted 11/14/2022

2. state which *systems* and *components* designated for inspection in these Standards have been inspected and any *systems* and *components* designated for inspection in these Standards which were present at the time of the inspection and were not inspected and a reason why they were not inspected.
3. state the condition of systems and components so inspected with specifically descriptive or defined terminology, such as Satisfactory or Repair Needed.
4. state any *systems* and *components* so inspected which were found to contain a *major defect* and any recommendations to have corrections made, monitored or evaluated by appropriate persons.

2.3 These Standards are not intended to limit *Inspectors* from:

- A. reporting observations and conditions in addition to those required in Section 2.2.
- B. excluding *systems* and *components* from the inspection if requested by the *client*.

### 3. GENERAL LIMITATIONS AND EXCLUSIONS

3.1 General limitations:

- A. Inspections done in accordance with these Standards are visual, not *technically exhaustive* and will not identify concealed conditions or latent defects.
- B. These standards are applicable to completed buildings with residential dwelling unit(s) and their garages or carports.

3.2 General exclusions:

A. *Inspectors* are NOT required to report on:

1. life expectancy of any *component* or *system*.
2. the causes of the need for a major repair.
3. the methods, materials and costs of corrections.
4. the suitability of the property for any specialized use.
5. compliance or non-compliance with applicable codes or regulatory requirements.
6. the market value of the property or its marketability.
7. the advisability or inadvisability of purchase of the property.
8. any *component* or *system* which was not *observed*.
9. the presence or absence of pests such as wood damaging organisms, rodents, or insects.
10. cosmetic items, underground items, or items not permanently *installed*.
11. property boundary lines or encroachments.
12. product recalls or conformance with manufacturers' installation instructions.
13. the insurability of the property. B. *Inspectors* are NOT required to:

1. offer warranties or guarantees of any kind.
2. calculate the strength, adequacy, or efficiency of any *system* or *component*.
3. enter any area or perform any procedure which may damage the property or its *components*, or be dangerous to the *Inspector* or other persons.
4. operate any *system* or *component* which is *shut down* or otherwise inoperable.
5. operate any *system* or *component* which does not respond to *normal operating controls*.
6. disturb insulation, move personal items, furniture, equipment, plant life, soil, snow, ice, or debris which obstructs access or visibility.
7. determine the presence or absence of any suspected environmental hazards including but not limited to toxins, fungus, molds, mold spores, mildew, radon, electromagnetic radiation,

**Commented [DS1]:** This comment change (removing the words "four or less") seems to imply that the BTR has entered into the realm of regulating the inspection of multi-family complexes, which is a concern and not advised. Suggest adding the "four or less" back in unless there is a desire to regulate the inspection of apartment complexes or other commercially owned residential properties.

carcinogens, noise, electromagnetic fields, hazardous waste, contaminants in building *components*, soil, water, and air.

8. determine the effectiveness of any *system installed* to control or remove suspected hazardous substances.
9. predict life expectancy, future conditions, including but not limited to failure of *components*.
10. project operating costs of *components*.
11. evaluate acoustical characteristics of any *system* or *component*.
12. determine the age of the structure, or *component* of a building, or differentiate between original construction, and subsequent additions, improvements, replacements or renovations.
13. observe any *system, component* or any non-primary function that is not included in these Standards.

3.3 Limitations and exclusions specific to individual *systems* are listed in following sections.

#### 4. SYSTEM: STRUCTURAL COMPONENTS

4.1 The *Inspector* shall *observe*:

A. *structural components* including:

1. foundation.
2. floors.
3. walls.
4. columns.
5. ceilings.
6. roofs.

4.2 The *Inspector* shall:

A. *describe* the type(s) of:

1. foundation.
2. floor structure.
3. wall structure.
4. ceiling structure.
5. roof structure.

B. enter *underfloor crawl spaces* and attic spaces except when:

1. access is obstructed;
2. the clearance is less than a nominal sixteen inches by twenty-four inches;
3. when entry could damage the property; or,
4. when *dangerous or adverse situations* are suspected.

C. report the methods used to inspect *underfloor crawl spaces* and attics.

D. report signs of water penetration into the building or signs of condensation on building *components*.

#### 5. SYSTEM: EXTERIOR

5.1 The *Inspector* shall *observe*:

- A. wall cladding, flashings and trim.
- B. entryway doors and *representative number* of windows.
- C. garage vehicle doors and door operators.
- D. decks, balconies, stoops, steps, areaways, and porches including railings.

- E. eaves, soffits and fascias.
- F. vegetation, grading, drainage, driveways, patios, walkways and retaining walls with respect to any apparent adverse effect on the condition of the building.

5.2 The *Inspector* shall:

- A. *describe* wall-cladding materials.
- B. operate all entryway doors and *representative number* of windows including garage vehicle doors, manually or by using permanently *installed* controls of any garage door operator.
- C. report whether or not any garage vehicle door operator will automatically reverse when tested using any available method.

**Commented [DS2]:** Suggest this sentence start with: operate a representative number of windows and all entryway doors including garage vehicle doors...

5.3 The *Inspector* is NOT required to *observe*:

- A. storm windows, storm doors, screening, shutters, awnings and similar seasonal accessories.
- B. fences.
- C. *safety glazing*.
- D. garage vehicle door remote control transmitters.
- E. geological conditions.
- F. soil conditions.
- G. *recreational facilities*.
- H. outbuildings other than garages and carports.
- I. coatings on and the hermetic seals between panes of glass.

6. SYSTEM: ROOFING

6.1 The *Inspector* shall *observe*: A. roof coverings.

- B. visible portions of *roof drainage systems*.
- C. flashings.
- D. skylights, chimneys and roof penetrations.
- E. signs of leaks or abnormal condensation on building *components*.

6.2 The *Inspector* shall:

- A. *describe* the type of roof covering materials.
- B. report the methods used to inspect roofing.

6.3 The *Inspector* is NOT required to: A. walk on the roofing.

- B. *observe* attached accessories including but not limited to solar *systems*, antennae, and lightning arresters.
- C. *observe* underground *roof drainage systems*.

7. SYSTEM: PLUMBING

7.1 The *Inspector* shall *observe*:

- A. interior water supply and distribution *system* including:
  - 1. piping materials, including supports and insulation.
  - 2. fixtures and faucets.
  - 3. *functional flow*.
  - 4. leaks.
  - 5. *cross connections*.
- B. interior drain, waste and vent *system*, including:
  - 1. traps, drain, waste, and vent piping; piping supports and pipe insulation.
  - 2. leaks.

- 3. *functional drainage.*
- C. hot water systems including:
  - 1. water heating equipment.
  - 2. *normal operating controls.*
  - 3. *automatic safety controls.*
  - 4. chimneys, flues and vents.
- D. fuel storage and distribution *systems* including:
  - 1. interior fuel storage equipment, supply piping, venting and supports.
- E. drainage sump pumps.
- F. waste ejector pumps.

7.2 The *Inspector* shall: A. *describe*:

- 1. visible water supply and distribution piping materials.
- 2. visible drain, waste and vent piping materials.
- 3. water heating equipment and energy source.
- 4. location of the main water and main fuel shutoff valves
- B. operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house.
- C. operate jetted bathtubs.

7.3 The *Inspector* is NOT required to:

- A. state the effectiveness of anti-siphon devices.
- B. determine whether water supply and waste disposal *systems* are public or private.
- C. operate *automatic safety controls.*
- D. operate any valve except water closet flush valves, fixture faucets and hose faucets.
- E. operate drainage sump pumps.
- F. *observe*:
  - 1. water conditioning *systems.*
  - 2. fire and lawn sprinkler *systems.*
  - 3. *on-site water supply quantity and quality.*
  - 4. on-site waste disposal *systems.*
  - 5. foundation irrigation *systems.*
  - 6. solar water heating *systems.*

8. SYSTEM: ELECTRICAL

8.1 The *Inspector* shall *observe*:

- A. service entrance conductors.
- B. service equipment, grounding equipment, main overcurrent device, main and distribution panels.
- C. amperage and voltage ratings of the service.
- D. branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages.
- E. the operation of a *representative number of installed* lighting fixtures, switches and polarity and grounding of receptacles located inside the house, garage, and on its exterior walls.
- F: the presence or absence of *GFCI* and *AFCI* protection.
- G: operation of *readily accessible GFCI* devices.
- H: the presence or absence of smoke alarms.

**Commented [DS3]:** The word alarms being plural is implying that there must be multiple smoke alarms and the number, placement, interconnectivity, etc. is a code matter that has evolved over the years. Suggest this read: the presence or absence of at least one smoke alarm inside the dwelling unit.

I: the presence or absence of carbon monoxide alarms where applicable.

**Commented [DS4]:** The term “where applicable” is not sufficient to assist the inspector or an EAC. Also, the number, placement, interconnectivity, etc. is a code matter that is currently evolving. Suggest this read: the presence or absence of at least one carbon monoxide alarm if fossil fuel appliances exist inside and/or serve the dwelling unit.

- 8.2 The *Inspector* shall: A. *describe*:
1. service amperage and voltage.
  2. branch circuit conductor materials.
  3. service type as being overhead or underground.
  4. location of main disconnect(s), main panel and sub panels.

- 8.3 The *Inspector* is NOT required to:
- A. insert any tool, probe or testing device inside the panels.
  - B. test or operate any electrical disconnect or overcurrent protection device, including *AFCI* devices.
  - C. *dismantle* any electrical device or control other than to remove covers of the main and sub panels.
  - D. test smoke or carbon monoxide alarms.
  - E. *observe*
    1. low voltage electrical *components* and *systems*.
    2. telephone, security, cable TV, intercom, audio-video, home network, *wifi systems*, *electronic controls* or any *components* that are not a part of the primary electrical distribution *system*.
    3. geothermal, solar, wind, and other renewable energy *systems*.

## 9. SYSTEM: HEATING

- 9.1 The *Inspector* shall *observe*:
- A. permanently *installed* heating *systems* including:
    1. heating equipment.
    2. *normal operating controls*.
    3. *automatic safety controls*.
    4. chimneys, flues and vents.
    5. *distribution systems*.
    6. air filters
    7. the presence or absence of an *installed* heat source in each *habitable space*. B. fuel-burning fireplaces and appliances including, but not limited to:
      1. manufactured fireplaces, freestanding stoves, and fireplace inserts.
      2. accessories *installed* in fireplaces.
      3. chimneys, flues, dampers, and vents.
      4. mantles, hearth, floor protection and wall protection.
- 9.2 The *Inspector* shall: A. *describe*:
1. primary energy source.
  2. heating equipment type.
  3. distribution type.
- B. operate the *systems* using *normal operating controls*.
- C. open *readily openable access panels* provided by the manufacturer or installer for routine homeowner maintenance.
- 9.3 The *Inspector* is NOT required to:
- A. operate heating *systems* when weather conditions or other circumstances may cause equipment damage.
  - B. operate *automatic safety controls*.

C. ignite or extinguish solid fuel fires, or move fireplace inserts and stoves or firebox contents.

D. *observe*:

1. the interior of flues.
3. humidifiers.
4. electronic air filters.
5. the uniformity or adequacy of heat supply to the various rooms.
6. the function and efficiency of multi-zone HVAC *system* dampers and thermostats.
7. seals and gaskets.
8. adequacy of combustion air *components*.
9. draft characteristics.
10. window or portable heating *systems*.
11. fireplace insert flue connections.
12. automatic fuel feed devices.
13. heat distribution assists (gravity fed and fan assisted).
14. fuel-burning fireplaces and appliances located outside the inspected structures.
15. glass enclosures and screens.

## 10. SYSTEM: COOLING

10.1 The *Inspector* shall *observe*:

A. permanently *installed* cooling *systems* including:

1. cooling equipment.
2. *normal operating controls*.
3. *distribution system*.
4. air filters.
5. the presence or absence of an *installed* cooling source in each *habitable space*.

10.2 The *Inspector* shall: A. *describe*:

1. energy source.
2. cooling equipment type.
3. distribution type.

B. operate the *systems* using *normal operating controls*.

C. open *readily openable access panels* provided by the manufacturer or installer for routine homeowner maintenance.

10.3 The *Inspector* is NOT required to:

- A. operate cooling *systems* when weather conditions or other circumstances may cause equipment damage.
- B. *observe* window or portable air conditioners.
- C. *observe* the uniformity or adequacy of cool-air supply to the various rooms.

## 11. SYSTEM: INTERIORS

11.1 The *Inspector* shall *observe*: A. walls, ceiling and floors.

- B. steps, stairways, balconies and railings.
- C. counters and a *representative number* of cabinets.
- D. a *representative number* of doors and windows.

- E. separation walls, ceilings, and doors between a dwelling unit and an attached garage or another dwelling unit.
- F. *installed* ovens, ranges, surface cooking appliances, microwave ovens, dishwashing machines and food waste grinders by using *normal operating controls* to activate the *primary functions*.

11.2 The *Inspector* shall:

- A. operate a *representative number* of windows and interior doors.
- B. report signs of water penetration into the building or signs of abnormal or harmful condensation on building *components*.
- C. report absence of *secondary fire egress* from bedrooms.

11.3 The *Inspector* is NOT required to *observe*:

- A. paint, wallpaper and other finish treatments on the interior walls, ceilings, and floors.
- B. carpeting.
- C. draperies, blinds or other window treatments.
- D. *recreational facilities* or another dwelling unit.
- E. non-primary features of any *observed* appliance.
- F. *installed* and freestanding kitchen and laundry appliances not listed in section 11.1.F

**Commented [D55]:** Potential arguments will exist regarding when a room is a bedroom and when it is not. A definition is needed for the term "bedrooms" - something like: Room(s) within a dwelling unit meant for sleeping that includes access to a built-in clothes closet.

## 12. SYSTEM: INSULATION & VENTILATION

12.1 The *Inspector* shall *observe*:

- A. insulation and vapor retarders in unfinished spaces.
- B. ventilation of attics and foundation areas.
- C. kitchen, bathroom, and laundry venting *systems*.

12.2 The *Inspector* shall *describe*:

- A. presence or absence of insulation and vapor retarders in unfinished spaces.

12.3 The *Inspector* is NOT required to report on:

- A. concealed insulation and vapor retarders.
- B. venting equipment which is integral with household appliances.

## GLOSSARY

### **Arc Fault Circuit Interrupter ("AFCI"):**

A type of safety device that is designed to quickly shut-off electric power in the event of arcing.

### **Automatic Safety Controls:**

Devices designed and *installed* to protect *systems* and *components* from *unsafe* conditions.

### **Client:**

A customer who contracts with a home *Inspector* for a home inspection.

### **Component:**

A *readily accessible* and observable aspect of a *system*, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the *system*.

### **Cross Connection:**

A physical connection or arrangement between potable water and any source of contamination.

**Dangerous or Adverse Situations:**

Situations which pose a threat of injury to the *Inspector*, and those situations that require the use of special protective clothing or safety equipment.

**Describe:**

Report in writing a *system* or *component* by its type, or other *observed* characteristics, to distinguish it from other *components* used for the same purpose.

**Dismantle:**

To take apart or remove any *component*, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.

**Distribution System(s):**

Components including but not limited to; fans, ducts with supports, fan coil units, registers, insulation, pumps, pipes and lines with supports, radiators, and convectors that are used for supplying heating or cooling in habitable spaces.

**Electronic Controls:**

Digital, computerized, low-voltage or solid-state operating devices.

**Functional Drainage:**

A drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

**Functional Flow:**

A reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

**Ground Fault Circuit Interrupter (“GFCI”):**

A type of safety device that is designed to quickly shut-off electric power in the event of a hot and neutral imbalance.

**Habitable Space:**

A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable rooms.

**Inspector:**

A person certified as a Home *Inspector* by the Arizona Board of Technical Registration.

**Installed:**

Attached or connected such that the *installed* item requires tools for removal.

**Major Defect:**

A *system* or *component* that is *unsafe* or the *primary function* is not working properly.

**Normal Operating Controls:**

Homeowner operated devices such as a thermostat, wall switch or safety switch.

**Observe:**

The act of making a visual examination of the *primary function* of a *system* or *component* and reporting on its Condition.

**On-site Water Supply Quality:**

Water quality is based on the bacterial, chemical, mineral and solids content of the water.

**On-site Water Supply Quantity:**

Water quantity is the rate of flow of water.

**Primary Function:**

The function of a device that is most reasonably apparent such as heat provided at elements or burners at a stove/oven, but not added features such as clocks, calibration, temperature settings, induction, convection or other characteristics.

**Readily Accessible:**

Available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

**Readily Openable Access Panel:**

A panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not sealed in place. Limited to those panels within normal reach or from a 4-foot stepladder, and otherwise *readily accessible*.

**Recreational Facilities:**

Spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities.

**Representative Number:**

For multiple identical *components* such as windows and electrical outlets, the inspection of one such *component* per room. For multiple identical exterior *components*, the inspection of one such *component* on each side of the building.

**Roof Drainage Systems:**

Gutters, scuppers, roof drains, downspouts, leaders, splash blocks, and similar *components* used to carry water off a roof and away from a building.

**Safety Glazing:**

Tempered glass, wired glass, laminated glass, or rigid plastic.

**Secondary Fire Egress:**

Openings, such as doors or windows, that allow direct access to the exterior of the structure from bedrooms.

**Shut Down:**

A piece of equipment whose safety switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a *system* that cannot be operated by the device or control that a home owner should normally use to operate it.

**Structural Component:**

A *component* that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

**System:**

A combination of interacting or interdependent *components*, assembled to carry out one or more functions.

**Technically Exhaustive:**

An inspection is technically exhaustive when it involves the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

**Underfloor Crawl Space:**

The area within the confines of the foundation and between the ground and the underside of the lowest floor structural.

**Unsafe:**

A condition in a *readily accessible, installed system* or *component* that is judged by the *Inspector* to be a significant risk of serious bodily injury during normal day-to-day use.



Kurt Winter &lt;kurt.winter@azbtr.gov&gt;

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## AZ BTR Rule Changes for Home Inspectors

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Alan Shelton &lt;alan@sheltoncg.com&gt;

Fri, Aug 4, 2023 at 8:40 AM

To: Kurt.Winter@azbtr.gov

Hi Kurt,

I recently received a letter from the AZ BTR regarding proposed rule changes for Arizona Home Inspectors. I am concerned with the deletion of the definition for *Immediate Major Repairs*. It is my opinion that the definitions for *Immediate Major Repairs* and *Major Defect* are similar, they are also quite different. It is my opinion that the omission of a warning for conditions that may 1. worsen appreciably, 2. cause further damage, and/or 3. be a serious hazard to the health and/or personal safety fails to adequately warn the public (Client) of these potential hazards. While the definition for Unsafe covers # 3., numbers 1. and 2. are now not covered.

I am also concerned about the deletion of the definition for *Evaluation by Appropriate Persons*. Section 2.2, C., 3. and 4. discuss reporting requirements as follows:

C. submit a written report to the client which shall:

3. state the condition of *systems and components* so inspected with specifically descriptive or defined terminology, such as Satisfactory or Repair Needed.

4. state any *systems and components* so inspected which were found to contain a *major defect* and any recommendations to have corrections made, monitored or *evaluated by appropriate persons*.

As you can see, the recommendation for evaluation by appropriate persons still exists in the Purpose and Scope for a written Home Inspection Report however, there is now no definition for who that is and it does not exclude the Home Inspector from being that appropriate person.

As some background for myself, my business and my personal perspective, I am sometimes retained as an expert witness in litigation involving Home Inspectors. As you know, many complaints involve misunderstandings specific to client expectations as compared to the written report (or verbal communications) from the Home Inspector. Having a well defined Standard of Practice document (SOP) not only protects the public, it also offers a layer of protection for Home Inspectors when they follow the SOP.

Alan Shelton  
AZ BTR 38095

*Alan Shelton*

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Kurt Winter <kurt.winter@azbtr.gov>

## Notice of Proposed RuleMaking

1 message

**Cy Porter** <cy@cyfyhi.com>

Sun, Aug 6, 2023 at 9:28 PM

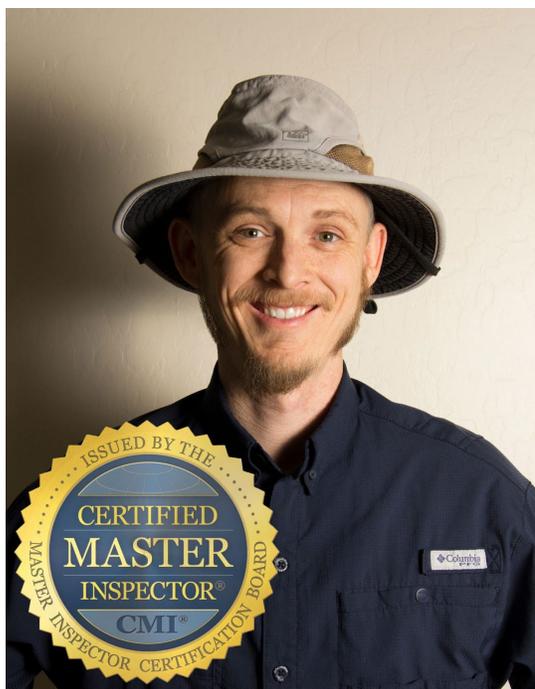
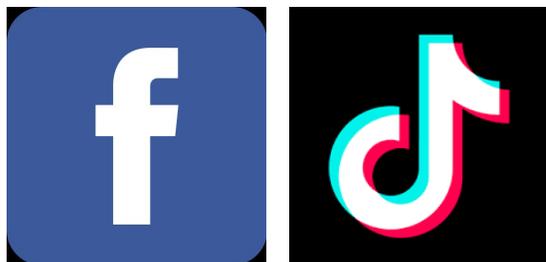
To: kurt.winter@azbtr.gov

Kurt,

I read through and compared both standards (current btr vs new ashi)

I have some very serious concerns.

1. IMO: You are going to get a majority of people agreeing to the changes instead of reviewing them. They will assume newer is better. Most people will not compare these standards side by side. Please make it as simple as possible by creating a list of just the changes? Attached is a document where I tried to copy and paste all the changes into 1 document.
2. There are some very poorly written requirement changes. Many changes will put inspectors in harm's way. The attached document has my concerns in red.
3. The changes are bad enough I would highly recommend the old AZ BTR standards not be changed vs the new ASHI standards.



**HOME INSPECTIONS**

**Cy Porter**

**602.329.3145**

**www.cyfyhi.com**

**cy@cyfyhi.com**

 **AZ BTR CHanges.pdf**  
69K

## 2. PURPOSE AND SCOPE

### 2.2 Inspectors shall:

C.

3. state the condition of systems and components so inspected with specifically descriptive or defined terminology, such as Satisfactory or Repair Needed.

## 3. GENERAL LIMITATIONS AND EXCLUSIONS

### 3.2 General exclusions:

A.

11. property boundary lines or encroachments.

12. product recalls or conformance with manufacturers' installation instructions.

13. the insurability of the property.

B.

12. determine the age of the structure, or component of a building, or differentiate between original construction, and subsequent additions, improvements, replacements or renovations.

13. observe any system, component or any non-primary function that is not included in these Standards

## 4. SYSTEM: STRUCTURAL COMPONENTS

### 4.2 The Inspector shall:

A. Columns (was removed)

B. probe structural components where deterioration is suspected. However, probing is NOT required when probing would damage any finished surface. (was removed)

**BAD CHANGE: it is important to require probing. This will protect inspectors that probe structural damage like trusses that are completely hollow from termite damage.**

## 5. SYSTEM: EXTERIOR

### 5.3 The Inspector is NOT required to observe:

I. coatings on and the hermetic seals between panes of glass.

## 6. SYSTEM: ROOFING

### 6.3 The inspector is NOT required to:

C. observe underground roof drainage systems.

## 7. SYSTEM: PLUMBING

### 7.1 The Inspector shall observe:

F. waste ejector pumps.

### 7.2 The Inspector shall:

A. describe:

4. location of the main water and main fuel shutoff valves

C. operate jetted bathtubs.

7.3 The Inspector is NOT required to:

E. operate drainage sump pumps.

F. observe:

6. spas, except as to functional flow and functional drainage. (replaced with 6. solar water heating systems)

## 8. SYSTEM: ELECTRICAL

8.1 The inspector shall observe:

F. the polarity and grounding of all receptacles within six feet of interior plumbing fixtures and all receptacles in the garage or carport, and on the exterior of inspected structures. ( old F is now combined with E and the new F is: the presence or absence of GFCI and AFCI protection.)

**BAD CHANGE: GFCI requirements do not change based on the city and are clearly written in the NEC 2017. AFCI is not easy. Some new build homes are ALL AFCI and others only have a few. If the BTR wants to include AFCI requirements then they need to be specific and state where AFCI must be present. Note: AFCI & GFCI requirements have changed every 3 years in the NEC.**

G: operation of readily accessible GFCI devices (readily accessible was added).

H: the presence or absence of smoke alarms.

I: the presence or absence of carbon monoxide alarms where applicable.

**BAD CHANGE: Need to be more clear. Current recommendations are for COs to be present in almost all homes. Exceptions: Homes with No gas, no fireplace, no attached garage**

8.2 The inspector shall:

B. report any observed aluminum branch circuit wiring (removed)

C. dismantle any electrical device or control other than to remove covers of the main and sub panels. (no change but this is poorly written)

**PLEASE CHANGE: inspector requirements should not be written in the not required section. C indicates that inspectors are required to remove covers. Please state this in the required section and not the not required section.**

D. test smoke or carbon monoxide alarms. (reworded and added as D from D.2)

**PLEASE REVIEW: Some smoke detectors are not accessible to test.**

E. Observe

1. low voltage electrical components and systems. (more words added)

3. geothermal, solar, wind, and other renewable energy systems.

## 9. SYSTEM: HEATING

9.1 The Inspector shall observe:

5. distribution systems. (reworded of 5 & 6)
6. air filters (everything else in 6 was removed and reworded in 5.

B. fuel-burning fireplaces and appliances including, but not limited to:

1. manufactured fireplaces, freestanding stoves, and fireplace inserts.
2. accessories installed in fireplaces.

**BAD CHANGE: Need to be more clear. Accessories can be anything.**

3. chimneys, flues, dampers, and vents.
4. mantles, hearth, floor protection and wall protection.

9.2 The Inspector shall:

A. describe:

1. primary energy source.
2. heating equipment type.
3. distribution type

9.3 The Inspector is NOT required to:

D:

6. the function and efficiency of multi-zone HVAC system dampers and thermostats.
7. seals and gaskets.
8. adequacy of combustion air components.
9. draft characteristics.
10. window or portable heating systems.
11. fireplace insert flue connections.
12. automatic fuel feed devices.
13. heat distribution assists (gravity fed and fan assisted).
14. fuel-burning fireplaces and appliances located outside the inspected structures.
15. glass enclosures and screens.

## 10. SYSTEM: COOLING

10.1 The Inspector shall observe:

A: (B was combined with A)

3. distribution system.
4. air filters.
5. the presence or absence of an installed cooling source in each habitable space.

10.2 The Inspector shall:

A: describe

3. distribution type.

## 11. SYSTEM: INTERIORS

11.1 The inspector shall observe:

F. sumps (replaced with: F. installed ovens, ranges, surface cooking appliances, microwave ovens, dishwashing machines and food waste grinders by using normal operating controls to activate the primary functions)

**BAD CHANGE: Need to be more clear. Kitchen appliances have several different modes and options. Will also need to remind home inspectors to document when that appliance is not present for protection.**

11.2 The inspector shall:

C. report absence of secondary fire egress from bedrooms.

**BAD CHANGE: Need to be more clear. Bedrooms have very specific code requirements and measurements. Operable door or window would be a much better choice of words.**

11.3 The inspector is NOT required to observe:

D. household appliances (removed and replaced with: recreational facilities or another dwelling unit)

F: installed and freestanding kitchen and laundry appliances not listed in section 11.1.F

**BAD CHANGE: Same complaint at 11.1.F**

## 12. SYSTEM: INSULATION & VENTILATION

12.2 The inspector shall describe:

B. absence of same in unfinished space at conditioned surfaces (removed)



Kurt Winter &lt;kurt.winter@azbtr.gov&gt;

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## Notice of Proposed Rulemaking

1 message

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**Ron Peters** <rpeters@avinspect.com>

Sun, Sep 10, 2023 at 7:06 PM

To: kurt.winter@azbtr.gov

RE: Your email dated 16AUG23

Mr. Kurt Warner,

Thank you for the opportunity to provide comments on the Proposed Rulemaking with respect to home inspectors.

Regarding the AZASHI home inspector standards of practice: I suggest adding a comment to the standards of practice that establishes a de minimis exemption for trivial items. When I was doing environmental compliance work, the EPA regulations acknowledged that some level of emission reporting was so insignificant, that it was not worth reporting. When I file my taxes, the IRS acknowledges that certain amounts of money that may otherwise be due, are not worth the time and effort to report, nor pay.

The reporting requirements for home inspectors in the State of Arizona currently do not accommodate the concept that some issues are so trivial that they should not affect a reasonable person's decision to buy a home, and therefore, should be outside the scope of the home inspection. For example; the standards of practice requires that the home inspector report on defects for exterior doors (Standards of Professional Practice 5.1 B). The current reporting requirements therefore require that any defect be reported (other than cosmetic items), no matter how insignificant they may be, in the grand scheme of purchasing a home. For an exterior door, this would include trivial items such as loose hardware, a missing screw in a door hinge, small gaps at the threshold or weatherstripping, a latch that needs adjustment, etc.

I suggest adding a comment to the Standards to rectify what has been an oversight in the Standards of Practice, ever since it was first adopted. Suggested verbiage to be added to GENERAL LIMITATIONS AND EXCLUSIONS: Any individual item that costs less than ½ of 1 percent of the value of the property to correct, repair or replace, is considered a trivial item that is outside the scope of the home inspection and the home inspector is not required to comment nor report on that item.

The proposed language in Section 8 (8.1 G) requires the "operation of readily accessible GFCI devices". I suggest revising this language/requirement to exclude GFCI devices and GFCI circuits that have an electrical device getting electrical power from the GFCI device/GFCI protected circuit, at the time of the inspection. For example: Operating a GFCI device/circuit that has an appliance plugged into the GFCI device, may result in problems such as the device losing whatever information is in its memory, or losing the setting of the clock in the appliance.

Sincerely,

A handwritten signature in blue ink that reads "Ron Peters". The signature is written in a cursive style with a large, prominent "R" and "P".

Ronald J. Peters

Arizona Certified Home Inspector #38160



Kurt Winter <kurt.winter@azbtr.gov>

## Notice of Rule Making - King Home Inspections

4 messages

mark kinghomeinspectionsaz.com <mark@kinghomeinspectionsaz.com>  
To: "kurt.winter@azbtr.gov" <kurt.winter@azbtr.gov>  
Cc: "mark kinghomeinspectionsaz.com" <mark@kinghomeinspectionsaz.com>

Mon, Sep 11, 2023 at 2:25 PM



Hi Kurt,

Some thoughts on the boards upcoming meeting to discuss changes for home inspections – having been an inspector since 2001 hopefully I have enough experience to offer an opinion ❖❖

As I understand it - the purpose of the notary is an attempt to keep the parallel inspector and the parallel inspection process honest – that always has and always will come down to the integrity of the inspector – if a parallel inspector wants to be dishonest it will be easy enough to get a friend of a friend to notarize the forms - so using a notary or not in my opinion won't be of any significance either way –

Requiring a home inspector applicant to only provide a detailed explanation of disciplinary action, license denial or a conviction seems responsible enough – in this present day of information being available in so many formats it wouldn't be difficult for the board to verify an applicant's information –

Updating the standards of practice seems likely to be something that would constantly need to be update through the years –

It's not clear to me what we are saying with The stipulation that a home inspector cannot perform or offer to perform a home inspection while also acting as a real estate agent or broker – are we saying a person cannot carry both a home inspectors certification and real estate agent/broker license at the same time – or – a person can carry all three at the same time but an inspector cannot act as the realtor and the inspector on the same property –

I have been told of a broker who is also a part owner of an inspection company and uses that inspection company for his offices home inspections – that has always seemed a very obvious conflict of interest – it seems to be well know in the industry and no one has said anything so I'm curious if I'm misunderstanding this stipulation – this also seems to be a violation of an inspector not being able to pay directly or indirectly ....to obtain referrals – the broker is referring his own home inspection company he is part owner of – he makes money on that real estate transaction – can't figure out how that is ok ?

I have never understood the value in the report Checklist Supplement – we have a standards of practice – that is what we must adhere to – what is the purpose of the Checklist Supplement? – it carries no legal enforcement or standard – we make sure the inspector adheres to the Standards of Practice – not the Checklist Supplement –

**Some thoughts and suggestions I have from speaking with other home inspectors through the years**

Why does the board constantly refer to our standards as the AZASHI standards – the state says we have our own standard – that they used ASHI's standards as a guide – fine – send ASHI a plaque showing gratitude they can hang on a wall – but ASHI home inspectors have constantly used the states verbiage to imply an inspector must belong to ASHI to be a certified home inspector in Arizona – I know this for a fact because my wife who is a realtor said something to me about having to belong to ASHI to be a state certified home inspector – when I told her that wasn't the case she said an inspector conducting a recent class she attended had said that we did – countless realtors have told me ASHI inspectors constantly use the state referencing AZASHI standards as proof that the realtor should only use ASHI certified home inspectors - I have never understood how it's ok with the Attorney's General office for the state government to advertise for a private business/association – this puts home inspectors that are not members of ASHI in the position of constantly having to explain that membership in ASHI is not required – and we are great inspectors even though we are not members of ASHI - there shouldn't be any mention of any private company/association on the state's website – speaking of – why do we leave the state website and go to AZASHI's website when we look at the standards of practice – again, all of this seems to appear the state is propagating for a private company/association - the state should have it's own website or page with the standards of practice – I don't see any reason ASHI needs mentioned at all –

In 2004 the BTR sent home inspectors a memo stating “ You are not allowed to participate in real estate preferred vendor programs, even if it is called another name” – very black and white – since then we have been sent memos stating we can't pay directly or indirectly to be on a preferred vendor's list – a little different than “You Can't” – some clarification would be much appreciated –

On the subject of inspectors paying to be a preferred vendor – when I tell realtors/brokers I can't pay they laugh – stating “all the other home inspectors are” – from what I have been told by realtors it is common place for inspectors to pay – I recently asked a large brokerage here in town what it would take to be a preferred vendor they told me and I quote “\$2500 a month” the rep didn't even hesitate – when I told her inspectors are not allowed to pay she said and again I quote “not my problem” – she said we have inspectors on our preferred vendor list right now that are paying – you will have to decide for yourself if it is worth the risk – when I brought this up to the BTR in the past they say “give us a name” – multiple inspectors have told me they get frustrated with other inspectors paying to be a preferred vendor and nothing happens to them – they have also said when they called the BTR to complain the BTR said “give us a name” – no one wants to risk doing that and here's why – the home inspection committee is made of practicing home inspectors – we have been told of inspectors on the committee that are paying to be on preferred vendor lists – so the people you're calling to file a complaint with concerning home inspectors paying to be preferred vendors are paying to be preferred vendors – I was told by a realtor that one of the principals in getting certification in place for inspectors was paying to be on a preferred vendor list – who's going to risk speaking with an inspector on the board who is doing or has a friend who is doing the very thing you're calling to file a complaint about – the inspector on the board may be the one you're wanting to file a complaint against - you are afraid of retribution – being black balled – singled out – however you want to look at it you're not going to take the risk –

It has always seemed like a huge conflict having active home inspectors being on the board – sitting in judgement of their competition –

**So here is my suggestion – how about an anonymous #800 or email – such as the State Department of Labor has – where home inspectors can file a complaint without fear of retribution –**

I think the BTR has been kicking around the idea of CE classes for home inspectors – this will come down to what it always comes down to – how conscientious is the inspector – requiring an inspector to take a class won't change that - there is so much availability to the code changes that an inspector has access to all the information he needs – this will only put additional financial strain on the inspector in an already difficult real estate market – I have been told by inspectors who are members of associations that require CE credits that those classes are worthless and are simply a regurgitation of the same old information every year - one inspector told me he hadn't been to a class in two years but still gets certified by the association anyway – as you know,

codes typically only change every three years – and home inspectors don't do code checks because we would have to take into consideration what code was in affect when the home was built, which code book did the municipality choose to work with, did that municipality step up those codes in any way – again, I'm not sure what we would gain in the quality of work from the inspector simply making the inspector attend a class –

But if that is the direction the BTR chooses to go – the classes would need to be administered by the state – not run through AZASHI or any other trade association – the associations could use that process to market for membership offering reduced fees for CE classes if the inspector joined their association – the trade associations already tell realtors they should use them because they require their inspector to attend CE classes – if the association could now say the state requires those classes and those classes go through our association it will give the association all the more ground to propagate that the realtor should only use an inspector that belongs to their trade association – if the state wants to require CE classes then the state should offer and administer those classes – this would make the home inspector process very clean – the state gives the certification, has their own standards of practice and CE classes – there would no need at all for any trade association in the state which would clear up a lot of confusion for the realtors and buyers

Thanks for your time Kurt – if you have any questions feel free to give me a call –



Mark H. King

King Home Inspections

602-550-1913

[mark@kinghomeinspectionsaz.com](mailto:mark@kinghomeinspectionsaz.com)

[www.kinghomeinspectionsaz.com](http://www.kinghomeinspectionsaz.com)

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**Kurt Winter** <kurt.winter@azbtr.gov>

Mon, Sep 11, 2023 at 4:44 PM

Cc: Judith Stapley <judith.stapley@azbtr.gov>, Hayden Weber <hayden.weber@azbtr.gov>, Julie Pham <julie.pham@azbtr.gov>  
Bcc: Keith Smith <azcpi@cs.com>, Paul Staron <paul@vbiaz.com>, Roger Skaggs <rdsdaggs@inspectit1staz.com>, Mike Kolejka <Kolejka.m@owp.com>, Advantage Inspection Service <azinspect@gmail.com>, John Elson <john@falconpropertyinspection.com>

Another comment

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Kurt Winter

*Kurt Winter*

Deputy Director

Board staff cannot interpret or provide guidance or advice with regards to any statute, rule, or substantive policy statement, including the rules contained in the Arizona Administrative Code. If you have any questions regarding the interpretation or applicability of any statute, rule, or substantive policy statement, you may wish to consult an attorney.

602-364-4883

[Kurt.Winter@AZBTR.gov](mailto:Kurt.Winter@AZBTR.gov)

Customer Satisfaction Survey

<https://goo.gl/forms/7MKsB9hDUFudg0SI3>



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**2 attachments**



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29K



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**Keith Smith** <azcpi@cs.com>  
To: Kurt Winter <kurt.winter@azbtr.gov>

Mon, Sep 11, 2023 at 4:49 PM

Thanks

Keith Smith  
Comprehensive Property Inspections  
Inspection Training of Arizona  
[16815 S. Desert Foothills Parkway, Suite 115](#)  
[Phoenix, AZ 85048](#)  
602-463-8697  
[www.azcpi.com](http://www.azcpi.com)  
[www.inspectiontrainingaz.com](http://www.inspectiontrainingaz.com)

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**Kurt Winter** <kurt.winter@azbtr.gov>  
To: "mark kinghomeinspectionsaz.com" <mark@kinghomeinspectionsaz.com>  
Cc: "mark kinghomeinspectionsaz.com" <mark@kinghomeinspectionsaz.com>

Mon, Sep 11, 2023 at 4:57 PM

Thank you Mr. King.

I have added your comments to the record for the Board's review and consideration.

Please note that the [home inspector rules and standards committee](#) will convene October 3 to review the public comments and possibly make recommendations to the Board. The plan at this moment is that the Board will decide how they wish to proceed

with the rulemaking at the November [Board meeting](#).

Please let me know if you have any questions.

Thank you again for your comments.

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Kurt Winter &lt;kurt.winter@azbtr.gov&gt;

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## Rule making email response

2 messages

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**The Timpanis** <mgtimpani@yahoo.com>

Mon, Dec 4, 2023 at 9:32 AM

Reply-To: The Timpanis &lt;mgtimpani@yahoo.com&gt;

To: "kurt.winter@azbtr.gov" &lt;kurt.winter@azbtr.gov&gt;

The board/state should be more open minded and forward thinking as far as the HI standards go. Do not just follow ASHI just because that's what we have done in the past. Yes ASHI was here in AZ many years ago, but times have changed. They were a great start 40 years ago. BTR is going to want to look at NACHI and any other groups that are operating that support home inspectors. That way BTR can compare the standards and get new ideas. Nachi is still growing - 30K inspectors now and keeps up on all the latest in the industry. Their standards should be looked at when updating the BTR standards.

I am on the enforcement board. The same issues keep coming up case after case. Its due to two major flaws in the current standards.

1. the report checklist does not match the standards and,
2. the standards wording is lousy and leaves room for inspectors to make mistakes , because of that wording

" the inspector shall observe " - does that mean put it in the report? does it mean just look at it??

Then under - inspector not required to - a,b,c,d, then it says "observe" so we don't look at those or do we look at those?

Does observe mean document?

I've been inspecting for 19 years, its confusing to me let alone new inspectors. No wonder there are so many EAC meetings. It not fair to the Inspectors the way the standards are written. They were a great start 40 years ago and of course were needed but now should be updated.

*Thank you, Mark and Gina Timpani*

**Pride Property Inspections**

520.907.9335 CERTIFIED MASTER INSPECTOR

***"If you think it's expensive to hire a professional to do the***

***job, wait until you hire an amateur."Red Adair*** [www.pridepropertyinspections.com](http://www.pridepropertyinspections.com)

<http://www.tucsoncommercialinspections.com>

<https://tucsonthermalimaging.com/>



**State of Arizona**  
**BOARD OF TECHNICAL REGISTRATION**

1110 W. Washington Street, Suite 240, Phoenix, Arizona 85007  
(602) 364-4930 FAX: (602) 364-4931 <https://btr.az.gov/>

- Jack Gilmore, Board Chair, Landscape Architect ● Michael Kolejka, Board Vice Chair, Architect
- Dana Klett, Land Surveyor ● Scott Sayles, Civil Engineer ● Bill Nesgood, Geologist
- Dr. Clinton Campbell, Public Member ● Jennifer Hobik, Esq, Public Member
- Kileen Lindgren, Public Member ● Stacy Skankey, Esq, Public Member
- Kent Wilson, Board Secretary, Public Member ● Vacant, Public Member

**MINUTES FOR REGULAR SESSION MEETING**

1110 W. Washington Street, Board Room 245, Phoenix, Arizona 85007

**Tuesday, December 6, 2022 –9:00am**

1. **CALL TO ORDER** – The Board meeting convened at 9:01am, adjourned for a break at 10:48am, re-adjourned at 10:57am and adjourned at 12:19pm.

2. **ROLL CALL**

**PRESENT**

Jack Gilmore  
Michael Kolejka  
Dana Klett  
Bill Nesgood  
Scott Sayles

**VIRTUAL**

Jennifer Hobik, Esq.  
Stacey Skankey, Esq. – Left at 9:50 am and rejoined at 10:40 am

**ABSENT**

Dr. Clinton Campbell  
Kileen Lindgren  
Kent Wilson

3. **CALL TO THE PUBLIC**

No one appeared before the Board.

4. **ADOPTION OF MINUTES**

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 4(A-B).*

A. Approve, modify and/or reject, November 1, 2022 Board meeting minutes.

Mr. Kolejka moved and Mr. Nesgood seconded to approve both regular session and executive minutes as written; motion carried 8-0.

B. Approve, modify and/or reject, November 1, 2022 Executive Session Board meeting minutes.

See 4(A).

## 5. CONSENT AGENDA

Items listed on the Consent Agenda will be considered by the Board as a single action item unless a Board Member wishes to remove a specific item for review, discussion, and action separately from the other Consent Agenda items.

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 5(A).*

### A. LICENSING MATTERS

Review, Consideration and Possible Action on the following:

1. Cancel Registrations and Certifications that have been Expired for one Full Renewal Period  
*Nothing to consider*
2. Grant Applications for Registration/Certification
  - a) Professional Exam unknown
    1. Sjogren, Timothy – Application for Registration as a Civil Engineer #226061
    2. Welker, Brian – Application for Registration as an Electrical Engineer #225967
    3. Wojciechowski, Samuel – Application for Registration as a Mechanical Engineer #226362
  - b) Certificate(s) of Experience from non-Professionals
    1. Magdosku, Christopher – Application for Registration as a Civil Engineer #225291
    2. Kumar, Ankush – Application for Registration as a Mechanical Engineer #226195
  - c) Council Records – experience under non-Professionals
    1. Bonham, Christopher – Application for Registration as an Electrical Engineer #225854
    2. Gidwani, Deepak – Application for Registration as a Structural Engineer #226259
    3. Hunt, Thomas – Application for Registration as a Civil Engineer #226051
    4. Scarbrough, James – Application for Registration as a Mechanical Engineer #226008
    5. Wallace, Raymond – Application for Registration as a Mechanical Engineer #225976
    6. Yu, Ching-Hua – Application for Registration as a Civil Engineer #226108
  - d) Background Review
    1. Cybulski, John – Application for Registration as a Mechanical Engineer #226180
    2. Dryer, Russell – Application for Certification as a Home Inspector #226075
    3. Fendrich, Andrew – Application for Registration as a Structural Engineer #226158
    4. Fiano, Kyle – Application for Registration as an Architect #226168
    5. Gough, Calvin – Application for Registration as a Civil Engineer #225962
    6. Kreager, Joshua – Application for Certification as a Home Inspector #226002
    7. Mulliken, Richard – Application for Registration as a Land Surveyor #225791
    8. Pearson, Jaron – Application for Certification as a Home Inspector #225385
    9. Ritchie, Douglas – Application for Registration as a Land Surveyor #226111
    10. Segroves, Michael – Application for Registration as a Land Surveyor #226097
    11. Stouffer, Aaron – Application for Registration as an Architect #225836
    12. Sullivan, Brian – Application for Registration as an Architect #226227
    13. Kimbrough, Dustin – Application for Registration as a Fire Protection Engineer #224912

- e) Disciplinary Action Review  
*Nothing to consider*
- f) Multiple Considerations  
*Nothing to consider*
- 3. Grant Universal Applications for Professional Registration/Certification
  - a) Enser, Mark – Application for Registration as a Mechanical Engineer #226196
  - b) Luxbacher, Mark – Application for Registration as a Mining Engineer #226014
  - c) Vigil, Brandon – Application for Registration as a Mechanical Engineer #226210
- 4. Grant Renewal Registration Application(s)
  - a) Background Review
    - 1. Canright, Michael – Renewal Application for Architect Registration #20156
    - 2. Hughett, Jonathan – Renewal Application for Home Inspector Certification #61594
  - b) Disciplinary Action Review
    - 1. Chafee, Robert – Renewal Application for Architect Registration #36765
- 5. Approve Application(s) for Exam Waivers
  - a) Application to waive Fundamental Exam
    - 1. Yabut, Romeo – Application to waive FE exam #225602
  - b) Application to waive Professional Exam
    - 1. Guerra, Joseph – Application to waive SE I exam #226039
    - 2. Moen, Cristopher – Application to waive PE Civil exam #266172
    - 3. Partain, Jason – Application to waive SE II exam #226017
    - 4. Swehla, Kevin – Application to waive SE II exam #226170
- 6. Approve Application(s) for Exam Authorization
  - a) Certificate(s) of Experience from non-Professionals
    - 1. Ernster, Jonathan – Application for PE exam authorization #225824
  - b) Council Records – experience under non-Professionals
    - 1. Knievel, Anthony – Application for AZBTR SSE Land Surveyor exam authorization #226041
- 7. Approve Application(s) for In-Training Designation
  - a) Certificate(s) of Experience from non-Professionals
    - 1. Whipple, Thomas – Application for Engineer-in-Training Designation #226120
- 8. Approve Extension Requests
  - a) Finn, Sean – Application for Registration as an Architect #225243
  - b) Gossett, Christopher – Application for ARE exam authorization #225456
- 9. Multiple Considerations
  - a) Monroy Hernandez, Rafael – Application to waive FE exam #225729
    - i. Certificate(s) of Experience from non-Professionals

ii. FE exam waiver

Mr. Sayles moved and Ms. Hobik seconded to approve all items under agenda item 5(A); motion carried 7-0.

## 6. LICENSING MATTERS

Discussion, Consideration and Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 6(A).*

A. Criminal Convictions and/or Charges review pursuant to A.R.S. 41-1093.04

1. Clarke, Kevin

AAG Scott Donald was present to provide legal advice.

Mr. Kolejka moved and Mr. Sayles seconded to advise Mr. Clarke that the criminal history materials he submitted to the Board would not at present preclude him from being granted registration by the Board; motion carried 7-0.

## 7. CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 7(A).*

Nothing to Consider

## 8. ENFORCEMENT MATTERS

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 8(A-F).*

A. Complaints Proposed for Resolution by Dismissal:

1. HI22-031, Chad Rissland, C.H.I. #74314

Alleger, Margaret MacDonald appeared virtually and made a statement before the Board. Investigator Daniel Carthel was present and made a statement before the Board. AAG Scott Donald was present to provide legal advice.

Mr. Sayles moved and Mr. Kolejka seconded to dismiss case #HI22-031; motion carried 7-0.

2. P22-046, Christopher Harper, P.E. (Structural) #42039

Respondent was present and made a statement before the Board. Respondent's counsel was present. Investigator Greg Roehm was present and made a statement before the Board.

Mr. Sayles moved and Mr. Nesgood seconded to dismiss case #P22-046; motion carried 6-0. Mr. Kolejka recused himself from the vote.

3. P22-072, Li-Chiun Lee, P.E. (Civil) #74403

Mr. Gilmore moved and Mr. Sayles seconded to dismiss cases #P22-072, #P23-009, #P23-010 and #P23-024; motion carried 7-0.

4. P23-009, Dinesh Kumar, P.E. (Civil) #60729 and Smartlink, LLC #19509 (*Expired*) (*Related Case P23-010*)

See 8(A)(3).

5. P23-010, Samuel Gonzalez, P.E. (Civil) #51689 and Smartlink, LLC #19509 (*Expired*) (*Related Case P23-009*)

See 8(A)(3).

6. P22-078, Philip Coppola, Non-Registrant and Philip S. Coppola & Associates, LLC, Non-Registrant Firm

Respondent appeared virtually, made a statement and answered Board member questions. Respondent's counsel appeared virtually, made a statement and answered Board member questions. Alleger, Rene Nunez was present and made a statement before the Board. Investigator Kaitlyn Crawford was present and made a statement before the Board. AAG Scott Donald was present to provide legal advice.

Mr. Kolejka moved and Mr. Sayles seconded to dismiss case #P22-078; motion carried 7-0.

7. P23-033, Trevor Entzminger, R.L.S. #41590 and BPG Designs, LLC #10791

Investigator Daniel Carthel was present and made a statement before the Board.

Mr. Sayles moved and Ms. Klett seconded to dismiss case #P23-033; motion carried 6-0. Ms. Skankey was absent from the vote.

The Board re-opened the agenda item for discussion at 11:27 am. Alleger Albert Rench appeared virtually and made a statement before the Board. The Board's previous decision did not change.

8. P23-034, Douglas Stroh, R.A. #13991

Alleger, Seth Trotter appeared virtually and made a statement before the Board. Investigator Daniel Carthel was present and made a statement before the Board. AAG Scott Donald was present to provide legal advice.

Mr. Kolejka moved and Mr. Sayles seconded to dismiss case #P23-034; motion carried 7-0.

9. P23-024, Ivonek Badilla, Non-Registrant and Evo Design 12<sup>th</sup> Street Studio, LLC, Non-Registrant Firm

See 8(A)(3).

B. Complaints Proposed for Resolution by Letters of Concern:

1. P22-065, Joseph Burke, P.E. (Civil) #31775

Respondent appeared virtually and made a statement before the Board. Investigator Kaitlyn Crawford was present and made a statement before the Board.

Ms. Klett moved and Mr. Sayles seconded to dismiss case #P22-065; motion carried 6-0. Ms. Skankey was absent from the vote.

C. Complaints Proposed for Resolution with Signed Consent Agreements:

1. P22-076, Gary Hokanson, R.A. #51987 and Hokanson Design, Non-Registrant Firm

Mr. Sayles moved and Mr. Kolejka seconded to accept Respondent's signed Consent Agreement; motion carried 7-0.

2. HI23-001, Kent Dean, C.H.I. #39959

Alleger Willie Williams was present and made a statement before the Board. Alleger Liza Williams was present and made a statement before the Board. Investigator Kaitlyn Crawford was present, made a statement and answered Board member questions. AAG Scott Donald was present to provide legal advice.

Mr. Kolejka moved and Mr. Sayles seconded to accept Respondent's signed Consent Agreement; motion carried 6-0. Ms. Skankey was absent from the vote.

Mr. Kolejka moved and Mr. Sayles seconded to approve Respondent's remedial training he wished to complete to comply with the consent agreement; motion carried 6-0. Ms. Skankey was absent from the vote.

D. Complaints Requiring Board Guidance:

1. P22-075, Douglas Taylor, Non-Registrant

Respondent was present and answered Board member questions. Respondent's counsel, Mr. John Gaylord was present and made a statement before the Board. Respondent's counsel, Mr. Joe Estes appeared virtually and made a statement before the Board. Alleger, Mr. Rick Rock appeared virtually and made a statement before the Board. Investigator Kaitlyn Crawford was present.

Mr. Kolejka moved and Ms. Hobik seconded to dismiss case #P22-075; motion carried 6-0. Ms. Skankey was absent from the vote.

E. Complaints Proposed for Administrative Closure without Prejudice:

1. P20-016, Carlos Padilla, Non-Registrant

Mr. Kolejka moved and Mr. Nesgood seconded to administratively close cases #P20-016, #P22-010 and #P23-002 without prejudice; motion carried 7-0.

2. P22-010, Carlos Padilla, Non-Registrant

See 8(E)(1).

3. P23-002, Carlos Padilla, Non-Registrant

See 8(E)(1).

#### F. Review and Consideration for EAC Membership

1. Bradley Donais, P.E. (Civil) #58121

Mr. Sayles moved and Ms. Klett seconded to accept EAC membership for Mr. Donais; motion carried 7-0.

### 9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 9(A-C). Additionally, the Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(4) (discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation) on agenda item 9(A).*

- A. Arizona Supreme Court Docket No. CV-21-0203-PR, 1 CA-CV 20-0510 & CV 2019-013509 – Mills v. Arizona State Board of Technical Registration

Mr. Greg Harris, the Board's outside legal counsel, made a statement and answered Board member questions.

- B. Annual Election of Board member Officers

Mr. Kolejka moved and Mr. Gilmore seconded to appoint Mr. Sayles as the Board's Secretary for 2023; motion carried 7-0.

Mr. Gilmore moved and Mr. Nesgood seconded to re-appoint Mr. Kolejka as the Board's Vice Chairperson for 2023; motion carried 7-0.

Mr. Kolejka moved and Mr. Sayles seconded to re-appoint Mr. Gilmore as the Board's Chairperson for 2023; motion carried 7-0.

- C. Home Inspector Rules Package

Mr. Roger Skaggs, President of the Arizona Chapter of American Society of Home Inspectors (AZASHI) was present and answered Board member questions.

Mr. Kolejka moved and Ms. Hobik seconded to direct Board to begin the process for opening up a rules package; motion carried 7-0.

## **10. DIRECTOR'S REPORT**

- A. Budget Update
- B. Previous Meeting Follow-Up
  - a. Online Transition
  - b. Board Staff Updates
  - c. Board Composition
- C. Licensing Numbers
- D. Enforcement Numbers
- E. List of Newly Granted Applicants

Ms. Stapley reported on the Board's budget, Board staff updates, and enforcement and licensing numbers.

## **11. BOARD CHAIR'S REPORT**

Nothing discussed

## **12. ASSISTANT ATTORNEY GENERAL'S REPORT**

Nothing discussed

## **13. STANDING COMMITTEE REPORTS**

- A. Legislation and Rules Committee – November 16, 2022 meeting

Mr. Winter reported on discussions by the Committee regarding legislative changes and review of prior Board substantive policy statements that took place during the Committee's meeting on November 16, 2022. Mr. Winter reported that the next Legislation and Rules Committee meeting is on December 14, 2022.

- B. Home Inspector Rules and Standards Committee – Next Meeting February 8, 2023

## **14. BOARD MEMBER REPORTS/DISCUSSION ON STATE AND NATIONAL COUNCIL ACTIVITIES, NEWS AND MEETINGS**

- A. National Association of State Boards of Geology (ASBOG)

Mr. Nesgood reported on ASBOG's efforts to raise awareness about licensing and the computer-based transition for geological exams.

- B. Council of Landscape Architectural Registration Boards (CLARB)
- C. National Council of Architectural Registration Boards (NCARB)

Mr. Kolejka reported on NCARB's Committee Summit that he attended in DC this month, NCARB's Board of Directors Meeting in January that he and Ms. Stapley have been invited to, restructure of NCARB's Board of Directors and his candidacy for Secretary for NCARB's Region 6 Executive Committee.

D. National Council of Examiners for Engineering and Surveying (NCEES)

Ms. Stapley reported on NCEES's upcoming Interim Zone Meeting that will take place in Houston in April.

Mr. Sayles reported on the transition to computer-based testing for engineering exams in 2023 and upcoming volunteer opportunities with NCEES.

E. American Society of Civil Engineers (ASCE)/American Council of Engineering Companies of Arizona (ACEC Arizona)

Mr. Sayles reported on the ASCE's conference on Board activities that he and Ms. Stapley attended in October and the ACEC's conference that he attended in September.

F. Inter-organizational Council on Regulation (ICOR)

Ms. Stapley reported on ICOR's query to appoint her to the Council and ICOR's upcoming conference in Greenville that she will attend.

15. **FUTURE BOARD MEETINGS** – January 5, 2023

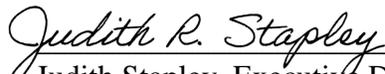
16. **SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.**

The Board requested a discussion on A.A.C. § 4-30-222 regarding engineering in-training designation and a presentation of land surveyor use of drones from an outside expert.

17. **MEETING ADJOURNMENT**

Signed this 5 day of January, 2023

  
Michael Kolejka, Acting Chairperson

  
Judith Stapley, Executive Director



**State of Arizona**  
**BOARD OF TECHNICAL REGISTRATION**

1110 W. Washington Street, Suite 240, Phoenix, Arizona 85007  
(602) 364-4930 FAX: (602) 364-4931 <https://btr.az.gov/>

- Jack Gilmore, Board Chair, Landscape Architect • Michael Kolejka, Board Vice Chair, Architect
- Dana Klett, Land Surveyor • Scott Sayles, Board Secretary, Civil Engineer
- Bill Nesgood, Geologist • Dr. Clinton Campbell, Public Member • Jennifer Hobik, Esq, Public Member
- Kileen Lindgren, Public Member • Stacy Skankey, Esq, Public Member
- Kent Wilson, Public Member • Hayley Bohall, Public Member

**MINUTES FOR REGULAR SESSION MEETING**

1110 W. Washington Street, Board Room 245, Phoenix, Arizona 85007

**Tuesday, April 25, 2023 –9:00am**

**1. CALL TO ORDER**

**2. ROLL CALL**

**PRESENT**

Jack Gilmore  
Michael Kolejka  
Scott Sayles  
Jennifer Hobik, Esq.  
Dana Klett  
Hayley Bohall –left at 12:22 pm

**VIRTUAL**

Dr. Clinton Campbell  
Lucas “Kent” Wilson –joined at 10:07 am  
Kileen Lindgren –left at 11:00 am

**ABSENT:**

Stacey Skankey, Esq.  
William “Bill” Nesgood

**3. CALL TO THE PUBLIC**

No one appeared before the Board.

**4. ADOPTION OF MINUTES**

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 4(A-B).*

**A. Approve, modify and/or reject, March 28, 2023 Board meeting minutes.**

Mr. Sayles moved and Mr. Kolejka seconded to approve regular session and Executive Session minutes as written; motion carried 8-0.

**B. Approve, modify and/or reject, March 28, 2023 Executive Session meeting minutes.**

See 4(A).

## 5. CONSENT AGENDA

Items listed on the Consent Agenda will be considered by the Board as a single action item unless a Board Member wishes to remove a specific item for review, discussion, and action separately from the other Consent Agenda items.

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 5(A).*

### A. LICENSING MATTERS

Review, Consideration and Possible Action on the following:

1. Cancel Registrations and Certifications that have been Expired for one Full Renewal Period
2. Grant Applications for Registration/Certification
  - a) Professional Exam unknown
    - 1) Schindler, Steven – Application for Registration as a Civil Engineer #237568
    - 2) Weber, Janine – Application for Registration as an Electrical Engineer #237481
    - 3) Ganji, Kenneth – Application for Registration as a Mechanical Engineer #237815
    - 4) Keisling, Shelton – Application for Registration as an Electrical Engineer #237359
  - b) Certificate(s) of Experience from non-Professionals
    - 1) Buga, Michael – Application for Registration as a Geologist #236920
    - 2) Hilliard, Abigail – Application for Registration as an Industrial Engineer #236705
    - 3) Knezevic, Ivan – Application for Registration as an Electrical Engineer #226601
    - 4) Morad, Aladdin – Application for Registration as a Civil Engineer #237519
    - 5) Weimer, Mitchell – Application for Registration as a Mechanical Engineer #237163
    - 6) Scales, Alan – Application for Registration as an Architect #236870
    - 7) Moncrieff, Joshua – Application for Registration as a Civil Engineer #237809
  - c) Council Records – experience under non-Professionals
    - 1) Boyce, Samuel – Application for Registration as a Civil Engineer #237722
    - 2) Davidson, Jessica – Application for Registration as a Civil Engineer #237555
    - 3) Gase, Zachary – Application for Registration as a Civil Engineer #237300
    - 4) Huntwork, Michael – Application for Registration as an Electrical Engineer #237826
    - 5) Trotter, Ngina – Application for Registration as a Civil Engineer #237969
  - d) Background Review
    - 1) Cesena, Joseph – Application for Certification as a Home Inspector #226648
    - 2) Fehlman, Henry – Application for Registration as a Civil Engineer #237416
    - 3) Pineda, Salvador – Application for Registration as a Civil Engineer #237610
    - 4) Tipton, Alex – Application for Registration as a Civil Engineer #237792
    - 5) Han, Nathan – Application for Registration as a Civil Engineer #237414
    - 6) Keaton, Jeffrey – Application for Registration as a Civil Engineer #237409
    - 7) Keaton, Jeffrey – Application for Registration as a Geologist #237417
    - 8) Seiberlich, Cortney – Application for Registration as a Civil Engineer #237833
    - 9) Thomas, Dylan – Application for Certification as a Home Inspector #237805
  - e) Disciplinary Action Review
    - 1) Heal, Stanley – Application for Registration as an Architect #237571
  - f) Multiple Considerations
    - 1) Bruns, Kevin – Application for Registration as an Electrical Engineer #237336
      - i. Background Review
      - ii. Council Record – experience under non-Professionals

3. Grant Universal Applications for Professional Registration/Certification
  - a) Montgomery Jr., William – Application for Registration as a Mechanical Engineer #237612
  - b) Garcia, John – Application for Registration as a Civil Engineer #237771
  
4. Grant Renewal Registration Application(s)
  - a) Background Review
    - 1) Hettinger, Daniel – Renewal Application for Land Surveyor Registration #70955
  - b) Disciplinary Action Review
    - 1) Apostolos, Michael – Renewal Application for Architect Registration #22536
    - 2) Lake, Stanford – Renewal Application for Civil Engineer Registration #41946
    - 3) Martinez-Flores, Rene – Renewal Application for Civil Engineer Registration #47518
    - 4) Parson, Earl – Renewal Application for Architect Registration #63521
    - 5) Worline, Timothy – Renewal Application for Structural Engineer Registration #42311
    - 6) Odell, William – Renewal Application for Mechanical Engineer Registration #33491
  
5. Approve Application(s) for Exam Waivers
  - a) Application to waive Fundamental Exam  
*Nothing to consider*
  - b) Application to waive Professional Exam
    - 1) Fortune, Jesse – Application to waive PE Civil exam #226378
  
6. Approve Application(s) for Exam Authorization
  - a) Certificate(s) of Experience from non-Professionals
    - 1) Barkenhagen, John – Application for ARE exam authorization #236865
    - 2) Stockwell, Philip – Application for AZBTR State-Specific LS exam #237322
  - b) Council Records – experience under non-Professionals  
*Nothing to consider*
  
7. Approve Application(s) for In-Training Designation
  - a) Background Review
    - 1) Laxamana, Ryan – Application for Engineer-In-Training Designation #237736
  
8. Approve Extension Requests
  - a) Johnson, Erin – Application for Registration as a Civil Engineer #237075

Mr. Kolejka moved and Dr. Campbell seconded to approve all items under agenda item 5(A); motion carried 8-0.

## 6. CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 6(A-B).*

- A. Complaints proposed to Rescind Administrative Hearing and refer to the appropriate prosecutorial agency for possible criminal prosecution:
  1. P22-064, Brian Stole, Non-Registrant

AAG Deanie Reh appeared before the Board.

Mr. Kolejka moved and Mr. Sayles moved to rescind the administrative hearing for case #P22-064 and administratively close without prejudice to refer to the appropriate prosecutorial agency for possible criminal prosecution; motion carried 8-0.

**B. Consideration of a Signed Consent Agreement in lieu of a Formal Hearing:**

1. HI22-027, Ryan Delaney, C.H.I. #40752 and Greenlight Real Estate Inspections, #15371 (*expired*), #23883 (*current*)

AAG Deanie Reh appeared before the Board.

Mr. Sayles moved and Ms. Bohall seconded to accept Respondent's signed Consent Agreement; motion carried 8-0.

**7. ENFORCEMENT MATTERS**

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 7(A-E).*

**A. Complaints Proposed for Resolution by Dismissal:**

1. P23-026, Jennifer Vitale, P.E. (Civil) #37891

Respondent, Alleger, John Schultz and Investigator Kaitlyn Crawford appeared before the Board.

Mr. Sayles moved and Ms. Klett seconded to dismiss case #P23-026; motion carried 7-0. Mr. Gilmore recused himself from the vote.

2. UK23-006, Title Companies

Mr. Kolejka moved and Ms. Klett seconded to dismiss cases #UK23-006 and #AL23-012; motion carried 7-0.

3. P23-082, Dale Jones, R.L.S. #36913

Respondent and Investigator Kaitlyn Crawford appeared before the Board.

Ms. Klett moved and Mr. Kolejka seconded to dismiss case #P23-082; motion carried 8-0.

4. P23-083, Shane Barnett, R.L.S. #50618

Respondent and Investigator Daniel Carthel appeared before the Board.

Ms. Klett moved and Dr. Campbell seconded to dismiss case #P23-083; motion carried 8-0.

5. P22-081, Robert Schlicher, P.E. (Civil) #54544

Respondent, Respondent's counsel, Barrett Lindsey, Alleger Patrick Marum and Investigator Gregory appeared before the Board.

Mr. Kolejka moved and Mr. Sayles seconded to dismiss case #P22-081; motion carried 7-0. Ms. Klett recused herself from the vote.

6. P23-050, Jose Villalobos, Non-Registrant and Jav Drafting & Design, LLC, Non-Registrant Firm

Respondent and Investigator Gregory Roehm appeared before the Board.

Mr. Kolejka moved and Dr. Campbell seconded to dismiss case #P23-050; motion carried 8-0.

7. AL23-012, Laura Roman, Non-Registrant (*Related Case AL23-013*)

See 7(A)(2).

8. AL23-004, Beerjas Bath A.A. #71097 and Fluent Home, LLC #20956 (*Related Cases: AL23-005 and AL23-006*)

Respondent and Investigator Brandon Eaden appeared before the Board.

Mr. Kolejka moved and Mr. Sayles seconded to dismiss cases #AL23-004, #AL23-005 and #AL23-006; motion carried 8-0. Mr. Wilson abstained from the vote.

9. AL23-005, Beerjas Bath A.A. #71097 and Fluent Home, LLC #20956 (*Related Cases: AL23-004 and AL23-006*)

See 7(A)(8).

10. AL23-006, Beerjas Bath A.A. #71097 and Fluent Home, LLC #20956 (*Related Cases: AL23-004 and AL23-005*)

See 7(A)(8).

#### B. Complaints Proposed for Administrative Closure:

1. AL23-013, Craig Cleasby, Non-Registrant (*Related Case AL23-012*)

Ms. Klett moved and Dr. Campbell seconded to administratively close cases #AL23-013 and #P23-096; motion carried 7-0.

2. P23-096, Alan Stephens, R.L.S. #13187

See 7(B)(1).

#### C. Complaints Proposed to Offer Consent Agreement:

1. HI22-022, Derek Otto, C.H.I. #54388

Respondent and Investigator Daniel Carthel appeared before the Board. The Board discussed the matter.

Mr. Sayles moved and Mr. Kolejka seconded to offer Respondent the proposed Consent Agreement, and if not signed within 30 days, proceed to a formal hearing; motion carried 8-1. Mr. Wilson voted

nay.

2. P23-057, Khalil Khani (Mathew Parker), Non-Registrant and S3DA Design #22920 (Expired)

Respondent and Investigator Gregory Roehm appeared before the Board. The Board discussed the matter.

Mr. Kolejka moved and Ms. Bohall seconded to offer Respondent the proposed Consent Agreement, and if not signed within 30 days, proceed to a formal hearing; motion carried 7-1. Ms. Klett voted nay.

The Board directed staff to open a complaint into SBDA Design.

3. P23-066, Hector Fimbres, Non-Registrant and Drafting Design and Professional Solutions, LLC, Non-Registrant Firm

Respondent, Respondent's counsel, Barbara Forde and Investigator Gregory Roehm appeared before the Board.

Mr. Kolejka moved and Ms. Hobik seconded to enter Executive Session to receive legal advice; motion carried 9-0.

The Board entered Executive Session at 10:30 am and reconvened to open session at 10:42 am.

Mr. Kolejka moved and Ms. Lindgren seconded to dismiss case #P23-066; motion carried 9-0.

The Board directed staff to open a complaint on S3DA Design.

4. HI23-018, Paul Furman, C.H.I. #38094 and AJF Engineering, Inc (AJF Inspections), #12469

Respondent, Respondent's counsel, Joshua Furman, Co-owner of AJF Inspections, Sharon Furman, and Investigator Gregory Roehm appeared before the Board. The Board discussed the matter.

Mr. Kolejka moved and Mr. Sayles seconded to enter Executive Session to receive legal advice; motion carried 8-0.

The Board entered Executive Session at 11:44 am and reconvened to open session at 11:57 am.

Mr. Kolejka moved and Ms. Klett seconded to offer Respondent the proposed Consent Agreement, and if not signed within 30 days, proceed to a formal hearing; motion carried 8-0.

#### D. Review and Consideration for EAC Membership:

1. Christopher Born, P.E. (Fire Protection) #46910

Mr. Sayles moved and Mr. Kolejka seconded to accept EAC membership for Christopher Born, Flora Chen, Erel Betser, Jewell Thomas Feng, John Sternitzke, Joelle DeJoseph, Raymond Schmid, Mason Berg, Vincent Collins, Yogesh Mantri and Theodore Moeller; motion carried 7-0.

2. Flora Chen, P.E. (Fire Protection) #44893

See 7(D)(1).

3. Erel Betser, P.E. (Fire Protection) #74457  
See 7(D)(1).
4. Jewell Thomas Feng, P.E. (Fire Protection) #61168  
See 7(D)(1).
5. John Sternitzke, P.E. (Fire Protection) #70691  
See 7(D)(1).
6. Joelle DeJoseph, P.E. (Fire Protection) #77290  
See 7(D)(1).
7. Raymond Schmid, P.E. (Fire Protection) #42216  
See 7(D)(1).
8. Mason Berg, P.E. (Fire Protection) #66894  
See 7(D)(1).
9. Vincent Collins, P.E. (Fire Protection) #78157  
See 7(D)(1).
10. Yogesh Mantri, P.E. (Civil) #33436  
See 7(D)(1).
11. Theodore Moeller, P.E. (Electrical) #35192  
See 7(D)(1).

**E. Consideration to Lift Stay of Revocation**

1. AL20-005, Edgar Olivas A.A. #56922 (Suspended)

Enforcement Manager Orlene Loera was present and made a statement before the Board.

Mr. Kolejka moved and Dr. Campbell seconded to lift the stay of revocation for Edgar Olivas; motion carried 7-0.

## **8. POLICY MATTERS**

Review, Consideration, and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 8(A). Additionally, the Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(4) (discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation) on agenda item 8(A).*

- A) Arizona Supreme Court Docket No. CV-21-0203-PR, 1 CA-CV 20-0510 & CV 2019-013509 – Mills v. Arizona State Board of Technical Registration

AAG Scott Donald reported that the plaintiff has filed a response and the State must reply by May 10.

- B) Approve the Notice of Proposed Rulemaking regarding Home Inspector Standards for submission to the Secretary of State

Mr. Winter reported on the Home Inspector Rules and Standards Committee's review of the Home Inspector Standards for submission to the Secretary of State. Ms. Stapley reported that she and Mr. Winter met with the Board's policy advisor at the Governor's office. AAG Scott Donald was present and answered Board member questions.

Mr. Kolejka moved and Mr. Sayles seconded to direct staff to approve the Notice of Proposed Rulemaking for submission to the Secretary of State; motion carried 7-0.

- C) Scholarship Models

Leslie Hanska, Executive Director of the Oklahoma Board of Architects, Landscape Architects and Registered Commercial Interior Designers appeared virtually, made a presentation to the Board on the Oklahoma Board's Path to Licensure Scholarship Fund and answered Board member questions.

## 9. DIRECTOR'S REPORT

- A. Budget Update
- B. Previous Meeting Follow-Up
  - a. Online Transition
  - b. Board Staff Updates
  - c. Board Composition
  - d. ADOT's exploration of transferring to digital submittals
  - e. Auto Approval Rules Update
- C. Licensing Numbers
- D. Enforcement Numbers
- E. Legislative Update
- F. List of Newly Granted Applicants

Ms. Stapley reported on the Board's budget, the Board's online transition, ADOT's exploration of transferring to digital submittals, auto approval rules updates and licensing and enforcement numbers.

## 10. BOARD CHAIR'S REPORT

Nothing discussed.

**11. ASSISTANT ATTORNEY GENERAL’S REPORT – Complaints Investigation Process, Conflict of Interest/Recusals**

AAG Scott Donald gave a presentation to the Board regarding the complaint investigation process and conflict of interest/recusals.

**12. STANDING COMMITTEE REPORTS**

- A. Legislation and Rules Committee – no new meeting date
- B. Home Inspector Rules and Standards Committee – April 12, 2023

Mr. Winter reported on the Home Inspector Rules and Standards Committee meeting that was held on April 12,

**13. BOARD MEMBER REPORTS/DISCUSSION ON STATE AND NATIONAL COUNCIL ACTIVITIES, NEWS AND MEETINGS**

- A. National Association of State Boards of Geology (ASBOG)
- B. Council of Landscape Architectural Registration Boards (CLARB)

Mr. Gilmore reported on CLARB’s effort to gather more volunteers, CLARB’s global task analysis and the states adoption of CLARB’s uniform standards.

- C. National Council of Architectural Registration Boards (NCARB)

Mr. Kolejka reported on the Regional Summit, NCARB’s upcoming annual business meeting, the Southern Arizona AIA event, and the MRA signing at the British embassy regarding reciprocity with the Architectural Board of Registration (ARB) in the United Kingdom that he attended with Ms. Stapley.

- D. National Council of Examiners for Engineering and Surveying (NCEES)

Ms. Stapley reported that Ms. Bohall would attend the annual NCEES meeting in August as a funded new board member delegate in addition to Mr. Sayles-civil engineer, Ms. Klett-land surveyor, and Scott Donald-assistant attorney general.

Mr. Sayles reported on the NCEES Western Zone Meeting that he, Ms. Stapley and Mr. Winter will attend this month.

**14. FUTURE BOARD MEETINGS – May 23, 2023**

**15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.**

The Board would like a discussion on “pay for play” practices seen in the Home Inspector profession.

**16. MEETING ADJOURNMENT**

**GOOGLE CHAT COMMENTS MADE DURING OPEN SESSION**

Kent Wilson, 10:06 am  
Thank you!

Signed this 23<sup>rd</sup> day of May, 2023



  
\_\_\_\_\_  
Jack Gilmore, Board Chair

  
\_\_\_\_\_  
Judith Stapley, Executive Director



State of Arizona  
BOARD OF TECHNICAL REGISTRATION

1110 W. Washington Street, Suite 240, Phoenix, Arizona 85007  
(602) 364-4930 FAX: (602) 364-4931 https://btr.az.gov/

Roger Skaggs, Home Inspector • John Elson, Home Inspector • Paul Staron, Home Inspector  
Keith Smith, Public Member • Scott Sayles, Engineer

**DRAFT MINUTES FOR  
HOME INSPECTOR RULES AND STANDARDS COMMITTEE SESSION MEETING**

Tuesday October 3, 2023, beginning at 9:00 a.m.  
1110 W. Washington, Board Room 245A  
Phoenix, AZ 85007

1. **CALL TO ORDER** –The Committee convened at 9:00 a.m., adjourned for a break at 11:10 a.m., reconvened at 11:17 a.m. and adjourned at 12:00 p.m.

2. **ROLL CALL**

**PRESENT**

Paul Staron Home Inspector Committee Chairman  
Roger Skaggs Home Inspector Committee Member  
John Elson Home Inspector Committee Member  
Scott Sayles Engineer Board Member  
Keith Smith Public Board Member –joined at 9:07 am

3. **CALL TO THE PUBLIC**

No one appeared before the Committee.

4. **ADOPTION OF MINUTES**

Review, Consideration and Possible Action on the following:

- A. Approve, modify and/or reject HIRSC Regular Session Minutes
  - 1. September 6, 2023 Meeting Minutes

Mr. Skaggs moved and Mr. Elson seconded to approve the minutes as written; motion carried 3-0. Mr. Sayles abstained from the vote.

5. **REVIEW, DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING:**

A. Public and Committee comments regarding proposed rule changes

The Committee discussed comments submitted by the public regarding the proposed rule changes and concluded final revisions to the Home Inspectors Standards of Practice. Certified Home Inspector David Swartz participated in the discussion.

Mr. Smith moved and Mr. Elson seconded to send the revised Standards of Practice to the Arizona Chapter of the American Society of Home Inspectors (AZASHI) for review and adoption; motion carried 5-0.

- B. Discussion led by Arizona Private Post -Secondary Education Executive Director, Kevin LaMountain, on the challenges of Home Inspector schools that do not have a physical presence in the state.

Kevin LaMountain, Executive Director of Arizona Private Post-Secondary Education, appeared before the Committee to discuss the licensing process and requirements, the challenges of Home Inspector schools that do not have a physical presence in the state and answered questions from the Committee.

- C. Home Inspector Certification Requirements: home inspector schools, 84 hours of classroom training, coursework, parallel inspections, examinations and other requirements.

Nothing was discussed.

- D. Parallel Inspector Requirements: training, certification, examination, coursework and other requirements.

Nothing was discussed.

- E. Definition of Pay to Play

The Committee deliberated on defining “Pay to Play” and discussed A.A.C. R4-30-301.01. Certified Home Inspectors David Swartz and Mark King participated in the discussion.

- F. Discussion of initial application assessments

The Committee discussed issues noticed by Board staff regarding initial application assessments. Home Inspector Report Assessor Stephen Von Ehrenkrook participated in the discussion.

## 6. **AAG TRAINING**

Nothing was discussed.

## 7. **DIRECTOR’S REPORT**

Ms. Stapley reported on licensing and enforcement numbers and that she and Mr. Winter will attend AZASHI’s conference this month.

## 8. **FUTURE AGENDA ITEMS**

The Committee would like to continue discussion on Home Inspector certification requirements, initial application assessments, parallel inspector requirements and defining “Pay to Play” practices in the Home Inspection profession.

## 9. **FUTURE MEETINGS** –January 17, 2024

10. **ADJOURNMENT**

Mr. Sayles moved and Mr. Elson seconded to adjourn the meeting at 12:00 p.m.; motion carried 5-0.

**DRAFT**

Signed this \_\_\_\_ day of January, 2024

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Paul Staron, Committee Chairman

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Judith Stapley, Executive Director



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- Edward Marley, Chairman/Architect • LeRoy Brady, Landscape Architect • Doug Bartlett, Geologist
- Robert Stanley, Engineer (Civil & Structural) • Dr. Alejandro Angel, Engineer (Civil)
- Michael Fondren, Land Surveyor

**DRAFT MINUTES FOR**  
**LEGISLATION AND RULES COMMITTEE REGULAR SESSION**  
1110 W. Washington Street, Board Room 245, Phoenix, Arizona 85007  
**Tuesday October 10, 2023 –10:00 A.M.**

1. **CALL TO ORDER** -The meeting convened at 10:00 a.m., adjourned from a break at 11:38 a.m., reconvened at 11:51 a.m., adjourned for a break at 1:54 p.m., reconvened at 2:07 p.m. and adjourned at 2:46 p.m.

2. **ROLL CALL**

**PRESENT**

Edward Marley  
LeRoy Brady  
Doug Bartlett  
Dr. Alejandro Angel –left at 1:53 p.m. and joined virtually at 1:56 p.m.  
Michael Fondren

**VIRTUAL**

Robert Stanley

DRAFT

3. **CALL TO THE PUBLIC**

No one appeared before the Committee.

4. **ADOPTION OF MINUTES**

Review, Consideration and Possible Action of the following:

A. Approve, modify and/or reject December 14, 2022 L&R Committee minutes.

Mr. Fondren moved and Mr. Stanley seconded to approve the minutes as written; motion carried 6-0.

5. **REVIEW, DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING:**

*The Committee may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 5(A-E).*

A. Board Supplemental Rule Package

The Committee discussed the supplemental rule package, which includes amendments to A.A.C. R4-30-102, R4-30-201, R4-30-202, R4-30-204, R4-30-247, R4-30-301 and R4-30-301.01.

Dr. Angel moved and Mr. Fondren seconded to recommend that the Board review and approve the supplemental rulemaking; motion carried 6-0.

B. Board substantive policy statements – possible updates or rescind

Registered Land Surveyor Helmuth Hack appeared virtually before the Committee.

Mr. Brady moved and Mr. Stanley seconded to recommend that the Board reaffirm Substantive Policy Statement #1: Alteration of Plans During Plan Checks, and consider a statutory change to clarify the law; motion carried 6-0.

Dr. Angel moved and Mr. Fondren seconded to reaffirm Substantive Policy Statement #7: Dating and Signing Seals and Revisions to Drawings; motion carried 6-0.

The Committee recommended that the Board reaffirm Substantive Policy Statements #2: Interpretation of Term “Total Cost of Construction”, #4: Sealing of Standard Details and #12: Survey Monuments in Subdivision.

The Committee recommended that the Board rescind Substantive Policy Statements #3: Fire Sprinklers and Fire Alarm Systems, #5: Use of Electronic Seals and Signatures, #6: Home Inspector Financial Assurance Bond Language, #9: Monumenting Public Land Survey System Section or Quarter Section Corners, #10: Requirements for Recording Results of Survey Drawings, #13: Direct Supervision for Sampling and Testing, #14: Arizona Board of Technical Registration Guidelines for Board Complaint Resolution and #19: Multi-plane glazing assemblies as it relates to the Standards of Professional Practice for Arizona Home Inspectors provision 11.2.B.

The Committee directed Board staff to forward Substantive Policy Statement #11: System or Component Source/End Point to the Home Inspector Rules and Standards Committee for review and that their next regularly scheduled meeting.

The Committee directed Board staff to review Substantive Policy Statement #15: Definition of “Practicing” and discuss at a later meeting.

C. Concerns regarding waivers of examination

Christopher Harper, Registered Structural Engineer, appeared virtually before the Committee to discuss his concerns regarding examination waivers pursuant to A.R.S. § 32-126 as they relate to registration of structural engineers. The Committee discussed the topic.

D. Board Statutes for possible future legislation

The Committee discussed revisions/additions to A.R.S. §§ 32-101, 32-102, 32-103, 32-106, 32-106.02, 32-106.03, 32-109, 32-109.01, 32-110, 32-111, 32-112, 32-121, 32-122, 32-122.01, 32-122.02, , 32-123, 32-125, 32-126, 32-127, 32-128, 32-129, 32-131, 32-144, 32-145 and 32-150.

Mr. Brady moved and Mr. Fondren seconded to advance the legislative package with discussed edits to the Board for review; motion carried 6-0.

E. Land Surveyor Standards

The Committee made revisions/additions to the Land Surveyor Boundary Minimum Standards. Mr. Fondren reported that he will present the newly edited Land Surveyor Boundary Minimum Standards to Arizona Professional Land Surveyors (APLS) at their next scheduled meeting.

6. FUTURE AGENDA ITEMS

The Committee would like to continue discussion on Substantive Policy Statements. The Committee would like a discussion regarding firm registration for national technical boards. Board staff will prepare research on national technical boards and present at the next meeting.

7. FUTURE MEETINGS

8. **ADJOURNMENT** –Mr. Fondren moved and Mr. Marley seconded to adjourn the meeting at 2:46 p.m.; carried 6-0.

COMMENTS MADE IN THE GOOGLE CHAT DURING OPEN SESSION

Helmuth Hack  
11:00 AM  
Can a price modifier be added to bring it closer to today

Helmuth Hack  
11:02 AM  
2% is standard per year

Helmuth Hack  
12:18 PM  
reviewers need guidance

Helmuth Hack  
12:32 PM  
Item 11: hope it doesn't violate 1st amendment of US Constitution

Helmuth Hack  
12:39 PM  
that would increase the xmas pool

Helmuth Hack  
1:05 PM  
not a good idea, the governor can do it, but not a good idea for the board to get involved in it

Helmuth Hack  
1:08 PM  
board should stick to licensing and registrant oversight. this spending money by the board a bad idea

Helmuth Hack  
1:22 PM  
1st year repeated 10 times



Helmuth Hack  
2:14 PM  
memory loss of ones profession doesnot forget  
sounds like anti-competition

Helmuth Hack  
2:17 PM  
once an engineer, always an engineer

Helmuth Hack  
2:20 PM  
recorders office has stated on TV the=that it is not their problem: they just record stuff

Helmuth Hack  
2:31 PM  
no

Helmuth Hack  
2:33 PM  
Survey Minimum Standards To preserve the 'spirit' of land surveying, I propose the following statement: Do the NCEES exams mirror Minimum Standards? If not, the min stds should not be considered after licensing by the Board. If the proposed New Minimum Standards promotes technology of today, and is not part of the exam, it should not be accepted by the Board. The above will prevent surprises to the registrant. My opinion, thanks.

Helmuth Hack  
2:37 PM  
call me, I will attend  
Future Agenda Items: Increase land surveying exam from 5 hours to the full 8 hours, and the state portion be at least 100 questions as a take home.

Kurt Winter  
2:39 PM  
hello Mr. Hack. if you wish to communicate with the committee, please speak to them. Thx

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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Edward Marley, Committee Chairman

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Judith Stapley, Executive Director



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- Dana Klett, Land Surveyor • Scott Sayles, Board Secretary, Civil Engineer
- Bill Nesgood, Geologist • Dr. Clinton Campbell, Public Member • Jennifer Hobik, Esq, Public Member
- Kileen Lindgren, Public Member • Stacy Skankey, Esq, Public Member
- Keith Smith, Public Member • Hayley Bohall, Public Member

**MINUTES FOR REGULAR SESSION MEETING**

1110 W. Washington Street, Board Room 245, Phoenix, Arizona 85007

**Tuesday, November 7, 2023 –9:00am**

1. **CALL TO ORDER** –The meeting convened at 9:00 a.m., adjourned for a break at 11:07 a.m., reconvened at 11:21 a.m. and adjourned at 1:31 p.m.

2. **ROLL CALL**

**PRESENT**

Jack Gilmore  
Michael Kolejka  
Scott Sayles  
Dana Klett  
William “Bill” Nesgood  
Jennifer Hobik, Esq.  
Stacy Skankey, Esq.  
Hayley Bohall  
Keith Smith –left at 12:31 p.m. and returned at 12:33 p.m.

**VIRTUAL**

Dr. Clinton Campbell

**ABSENT**

Kileen Lindgren

3. **CALL TO THE PUBLIC**

No one appeared before the Board.

4. **ADOPTION OF MINUTES**

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 4(A-C).*

A. Approve, modify and/or reject, September 26, 2023 Board meeting minutes.

Mr. Kolejka moved and Mr. Sayles seconded to approve the September 26, 2023, September 29, 2023 and October 20, 2023 meeting minutes as written; motion carried 10-0.

B. Approve, modify and/or reject, September 29, 2023 Board meeting minutes

See 4(A).

C. Approve, modify and/or reject, October 20, 2023 Board meeting minutes

See 4(A).

## 5. CONSENT AGENDA

Items listed on the Consent Agenda will be considered by the Board as a single action item unless a Board Member wishes to remove a specific item for review, discussion, and action separately from the other Consent Agenda items.

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 5(A).*

### A. LICENSING MATTERS

Review, Consideration and Possible Action on the following:

1. Cancel Registrations and Certifications that have been Expired for one Full Renewal Period
2. Grant Applications for Registration/Certification
  - a) Professional Exam unknown
    - 1) Baily, Michael – Application for Registration as a Civil Engineer #239707
  - b) Certificate(s) of Experience from non-Professionals
    - 1) Morrison, Brent – Application for Registration as a Chemical Engineer #238669
    - 2) Noone, Richard - Application for Registration as a Civil Engineer #239065
    - 3) Rahman, Md Kalimur – Application for Registration as a Civil Engineer #239589
    - 4) Rosendahl, Paul – Application for Registration as a Mechanical Engineer #239113
    - 5) Schwartz, Andrew – Application for Registration as a Landscape Architect #238611
  - c) Council Records – experience under non-Professionals
    - 1) Brown, Julie – Application for Registration as a Fire Protection Engineer #239790
    - 2) Monahan, Brenden – Application for Registration as a Civil Engineer #239771
    - 3) Rogelstad, Robert – Application for Registration as a Civil Engineer #239754
    - 4) Thai, Charles – Application for Registration as an Electrical Engineer #239887
    - 5) Spencer, Donald – Application for Registration as an Electrical Engineer #238418
    - 6) Zubaidi, Samer – Application for Registration as an Electrical Engineer #239940
    - 7) Alicea, Marian – Application for Registration as an Environmental Engineer #239967
    - 8) Dahl, John – Application for Registration as an Electrical Engineer #239907
  - d) Background Review
    - 1) Cramer, Tyler – Application for Registration as a Civil Engineer #239704
    - 2) Jimenez, Ricardo – Application for Certification as a Home Inspector #239215
    - 3) Lee, Sung – Application for Registration as an Architect #239624
    - 4) Mowry, John – Application for Registration as a Civil Engineer #237352
    - 5) Robillard, Jared – Application for Registration as a Mechanical Engineer #238764
    - 6) Washington, Clay – Application for Registration as an Electrical Engineer #239752
    - 7) Brudz, Adrian – Application for Registration as a Civil Engineer #239891
    - 8) Harrmann, Eric – Application for Registration as an Architect #238631
    - 9) Zelibor, Michael – Application for Registration as a Civil Engineer #239970
    - 10) Gularte, Gabe – Application for Certification as a Home Inspector #239432
  - e) Disciplinary Action Review
    - 1) Drake, Richard – Application for Registration as an Architect #239603
    - 2) King, Daniel – Application for Registration as an Electrical Engineer #239795

- 3) Oroyinyin, Waheed – Application for Registration as an Architect #239550
- f) Multiple Considerations
  - 1) Hawkins, Darryl – Application for Registration as an Architect #239554
    - i. Background Review
    - ii. Disciplinary Action
- 3. Grant Universal Applications for Professional Registration/Certification
  - a) Froeschle, Lynn – Application for Registration as an Architect #239055
  - b) Hielema, Eric – Application for Registration as a Civil Engineer #239701
  - c) Pajak, Nicholas – Application for Registration as a Civil Engineer #239115
- 4. Grant Renewal Registration Application(s)
  - a) Background Review
    - Nothing to consider*
  - b) Disciplinary Action
    - 1) Delph, Kent – Renewal Application for Civil Engineer Registration #30497
    - 2) Ellsworth, David – Renewal Application for Structural Engineer Registration #24470
    - 3) Gilham, Paul – Renewal Application for Civil Engineer Registration #19407
    - 4) Hice, Jonnae – Renewal Application for Civil Engineer Registration #65013
    - 5) Oatman, Collin – Renewal Application for Civil Engineer Registration #52750
    - 6) Reyes, Juan – Renewal Application for Civil Engineer Registration #52934
    - 7) Tompos, Eric – Renewal Application for Civil Engineer Registration #43672
    - 8) Wygoda, Shlomo – Renewal Application for Architect Registration #71739
- 5. Approve Application(s) for Exam Waivers
  - a) Application to waive Fundamental Exam
    - Nothing to consider*
  - b) Application to waive Professional Exam
    - 1) Fagan, Brett – Application to waive PE Civil exam #239933
  - c) Multiple Considerations
    - 1) Yang, Yuhe – Application to waive PE Structural exam #239542
      - i. Council Record – experience under non-Professionals
      - ii. Exam Waiver
    - 2) Klein, Richard – Application to waive PE Civil exam #239417
      - i. Background Review
      - ii. Disciplinary Action
      - iii. Exam Waiver
- 6. Approve Application(s) for Exam Authorization
  - a) Certificate(s) of Experience from non-Professionals
    - 1) Etcheverry, Farrah – Application for FS exam authorization #239054
- 7. Approve Application(s) for In-Training Designation
  - a) Background Review
    - 1) Heaton, Daniel – Application for Engineer-in-Training Designation #238507
    - 2) Berkner, Travis – Application for Engineer-in-Training Designation #239502
- 8. Approve Extension Requests
  - a) Parenteau, John – Application for Registration as a Civil Engineer #239513

Mr. Sayles moved and Ms. Skankey seconded to approve all items under agenda item 5(A); motion carried 10-0.

## 6. LICENSING MATTERS

Review, discuss and take possible action on the following:

### A. Grant Applications for Registration/Certification Dependent Upon Consent Agenda Decision

#### 1. Council Records – experience under non-Professionals

- a) Yang, Yuhe – Application for Registration as a Structural Engineer #239431

Licensing Manager Julie Pham appeared before the Board.

Mr. Sayles moved and Dr. Campbell seconded to grant Mr. Yang's Application for Registration as a Structural Engineer #239431; motion carried 10-0.

### B. Board Discussion Regarding Multiple Considerations for Registration

#### 1. Bernhardt, Craig – Application for Registration as a Land Surveyor #238468

- a) Background Review
- b) Failure to comply with previous board order

Applicant Craig Bernhardt and Licensing Manager Julie Pham appeared before the Board.

The Board deliberated and did not take any action.

### C. Reconsideration of Administrative Closure

#### 1. Gonani, Frank – Application to waive PE Civil exam pursuant to A.R.S. § 32-126(B)(1)

Applicant Frank Gonani and Licensing Manager Julie Pham appeared before the Board. The Board discussed the matter.

Mr. Sayles moved and Mr. Kolejka seconded to deny reconsideration of administrative closure for Mr. Gonani's application to waive the PE civil exam; motion carried 10-0.

## 7. CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 7(A).*

*Nothing to Consider*

## 8. ENFORCEMENT MATTERS

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 8(A-F).*

### A. Complaints Proposed for Resolution by Dismissal:

1. P23-109, Michael Daily, Non-Registrant and Michael C. Daily Design Consultants, LLC, Non-Registrant Firm

Investigator Daniel Carthel appeared before the Board. The Board discussed the investigation.

Mr. Kolejka moved and Ms. Skankey seconded to dismiss case #P23-109; motion carried 10-0.

2. UK24-006, Gary Smith, Non-Registrant and Energy Services, LLC, Non-Registrant Firm

Investigator Brandon Eaden appeared before the Board.

Mr. Sayles moved and Ms. Skankey seconded to dismiss case #UK24-006; motion carried 10-0.

3. HI24-008, Chad Casper, C.H.I. #64865 and Pillar to Post Home Inspectors, #20569

Respondent and Investigator Kaitlyn Crawford appeared before the Board.

Mr. Kolejka moved and Mr. Smith seconded to dismiss case #HI24-008; motion carried 10-0.

4. P24-015, Jacob Vinton, P.E. (Structural) #58976 and P.E. (Civil) #11067

Alleger Jeremy Laipple and Enforcement Manager Orlene Loera appeared before the Board.

Ms. Skankey moved and Mr. Sayles seconded to dismiss case #P24-015; motion carried 10-0.

5. P24-017, Amy Heckathorn, P.E. (Structural) #53165

Respondent and Enforcement Manager Orlene Loera appeared before the Board.

Ms. Skankey moved and Ms. Hobik seconded to dismiss case #P24-017; motion carried 10-0.

6. P24-011, Katherine Gardner, P.E. (Chemical) #79248

Respondent, Alleger Keith Olmert and Enforcement Manager Orlene Loera appeared before the Board.

Mr. Sayles moved and Mr. Kolejka seconded to dismiss case #P24-011; motion carried 10-0.

7. P23-091, Al Webb, Non-Registrant

Respondent and Investigator Kaitlyn Crawford appeared before the Board.

Ms. Skankey moved and Dr. Campbell seconded to dismiss case #P23-091; motion carried 10-0.

8. UK24-007, Unknown

Ms. Skankey moved and Ms. Hobik seconded to dismiss case #UK24-007; motion carried 10-0.

**B. Complaints Proposed for Resolution with Letter of Concern:**

1. HI23-022, Dustin Dixon, C.H.I. #64495

Investigator Daniel Carthel appeared before the Board.

Mr. Smith moved and Mr. Sayles seconded to issue Respondent a Letter of Concern with a recommendation that Respondent review the Arizona Standards of Professional Practice for Home Inspectors; motion carried 10-0.

2. HI23-027, Larry Zink, C.H.I. #68671

Investigator Brandon Eaden appeared before the Board.

Ms. Skankey moved and Ms. Hobik seconded to issue Respondent a Letter of Concern; motion carried 10-0.

3. HI23-017, Ron Dye, C.H.I. #43638

Respondent, Alleger Adam Finn and Investigator Brandon Eaden appeared before the Board.

Mr. Smith moved and Mr. Kolejka seconded to issue Respondent a Letter of Concern; motion carried 10-0.

4. HI23-025, Sean Roberson, C.H.I. #47768

Respondent and Investigator Brandon Eaden appeared before the Board. The Board discussed the investigation.

Mr. Smith moved and Mr. Sayles seconded to issue Respondent a Letter of Concern; motion carried 8-2. Mr. Kolejka and Ms. Skankey voted nay.

C. Complaints Proposed for to Offer Consent Agreement:

1. P23-054, Mark Grim, R.L.S. #51969

Respondent, Investigator Daniel Carthel and Enforcement Manager Orlene Loera appeared before the Board. The Board discussed the investigation.

Ms. Klett moved and Mr. Smith seconded to amend the proposed Consent Agreement to remove the allegation of potentially violating A.R.S. 32-128 (C)(4) through A.A.C. R4-30-301 (13); motion carried 10-0.

2. HI23-037, Michael Nelson, #72994 and Inspections Over Coffee, Chandler, #24865

Respondent, Investigator Daniel Carthel and Enforcement Manager Orlene Loera appeared before the Board. The Board discussed the investigation.

Mr. Kolejka moved and Ms. Klett seconded to offer Respondent the proposed Consent Agreement, and if not signed within 30 days, proceed to a formal hearing; motion carried 6-3. Mr. Nesgood, Ms. Skankey, and Ms. Bohall voted nay. Mr. Smith recused himself from the vote.

3. P24-016, Josphe Zeimet, R.L.S. #45086

Respondent, Respondent's wife Sue Zeimet and Investigator Daniel Carthel appeared before the Board.

Mr. Kolejka moved and Mr. Sayles seconded to modify Respondent's current Consent Agreement to allow for a 6-month extension of time for payments contingent on Respondent fulfilling the terms of the agreement, and after six months, the Board may grant Respondent another extension; motion carried 10-0.

**D. Complaints Proposed for Resolution with Letter of Concern and Offer Consent Agreement:**

1. HI23-042, Jovan Cirerol, C.H.I. #73583

Respondent and Investigator Kaitlyn Crawford appeared before the Board.

Mr. Kolejka moved and Mr. Sayles seconded to accept Respondent's signed Consent Agreement and issue Respondent a Letter of Concern; motion carried 10-0.

**E. Cases to be Forwarded for Possible Criminal Prosecution:**

1. P23-081, Christopher Tarango, Non-Registrant

Respondent, Respondent's Counsel Steven Beeghley and Investigator Kaitlyn Crawford appeared before the Board. The Board discussed the investigation.

Ms. Skankey moved and Mr. Smith seconded to not forward this matter for possible criminal prosecution; motion carried 10-0.

**F. Review and Consideration for EAC Membership:**

1. John Christmann, C.H.I. #74140

The Board reviewed Mr. Christmann's application for EAC membership and requested that Mr. Christmann be available to answer Board questions at the Board's December 5 meeting.

## **9. POLICY MATTERS**

Review, Consideration, and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 9(A)-(D). Additionally, the Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(4) (discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation) on agenda item 9(A).*

- A. Arizona Supreme Court Docket No. CV-21-0203-PR, 1 CA-CV 20-0510 & CV 2019-013509 – Mills v. Arizona State Board of Technical Registration

AAG Scott Donald reported that Division 1 of the Appeals Court has transferred the case to Division 2. Mr. Donald also reported that a briefing schedule has been set by the court and that the first brief will be submitted to the court by the end of January.

**B. Board to review and discuss exam allegations received from National Council of Architectural Registration Boards (NCARB)**

Mr. Winter reported that Board staff has been in contact with the individual named in the allegations received from NCARB and that a special Board meeting may be convened in the near future regarding the subject.

**C. Review of Substantive Policy Statements recommended for reaffirmation or recension based on recommendation from the Legislation and Rules Committee.**

The Board tabled review of Substantive Policy Statements to the next Board meeting.

**D. Supplemental Rule Package**

Mr. Winter reported on the work done by the Home Inspector Rules and Standards Committee and the Legislation and Rules Committee regarding the proposed rulemaking and recent changes made to the proposed rulemaking based on public comments received.

Mr. Kolejka moved and Mr. Sayles seconded to direct Board staff to forward the supplemental rules package to the Arizona Secretary of State office to publish in the Arizona Administrative Register in order to open the public comment period; motion carried 10-0.

**10. DIRECTOR'S REPORT**

- A. Budget Update
- B. Previous Meeting Follow-Up
  - a. Online Transition
  - b. Board Staff Updates
  - c. Board Composition
- C. Licensing Numbers
- D. Enforcement Numbers
- E. List of Newly Granted Applicants

Mr. Winter reported on the Board's online transition.

**11. ASSISTANT ATTORNEY GENERAL'S REPORT**

Nothing was discussed.

**12. STANDING COMMITTEE REPORTS**

**A. Legislation and Rules Committee – October 10, 2023**

Mr. Winter reported on the Legislation and Rules Committee meeting that was held on October 10, 2023.

**B. Home Inspector Rules and Standards Committee –October 3, 2023 & January 17, 2024**

Mr. Winter reported on the Home Inspector Rules and Standards Committee meeting that was held on October 3, 2023 and that the committee will hold another meeting in January.

**13. BOARD MEMBER REPORTS/DISCUSSION ON STATE AND NATIONAL COUNCIL ACTIVITIES, NEWS AND MEETINGS**

**A. National Association of State Boards of Geology (ASBOG)**

Mr. Nesgood reported on ASBOG’s Annual Meeting that he and Mr. Winter attended in October.

**B. Council of Landscape Architectural Registration Boards (CLARB)**

Mr. Gilmore reported on CLARB’s collaboration with international groups.

**C. National Council of Architectural Registration Boards (NCARB)**

Nothing was discussed.

**D. National Council of Examiners for Engineering and Surveying (NCEES)**

Mr. Sayles reported on NCEES’s discussions regarding continuing education.

**E. Council on Licensure, Enforcement and Regulation (CLEAR)**

Mr. Winter reported on CLEAR’s meeting that he attended in September.

**F. The Federation of Associations of Regulatory Boards (FARB)**

AAG Scott Donald reported on FARB’s annual conference that he attended in October.

**G. American Council of Engineering Companies Arizona (ACEC)**

Mr. Sayles and Mr. Winter reported on ACEC’s conference on Roads and Streets that Mr. Winter attended in November.

**14. FUTURE BOARD MEETINGS – December 5, 2023**

**15. SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.**

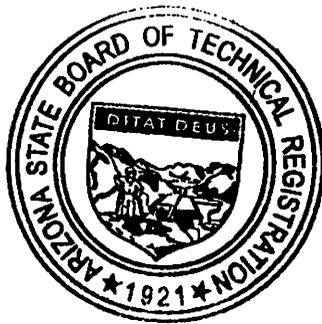
The Board will continue review of Substantive Policy Statements. The Board request that Board staff compile data regarding the frequency of complaints submitted by the same allegor for a discussion regarding registrants using the Board to harass their competitors. The Board also requested a discussion regarding establishing minimum standards and requirements for Enforcement Advisory Members, a discussion on “pay to play” and a discussion clarifying Arizona Boundary Survey Minimum Standards.

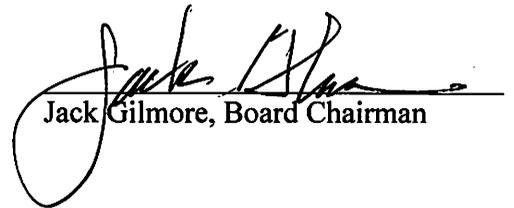
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16. MEETING ADJOURNMENT

Signed this 5 day of December, 2023



  
Jack Gilmore, Board Chairman

  
Judith Stapley, Executive Director



**State of Arizona**  
**BOARD OF TECHNICAL REGISTRATION**

1110 W. Washington Street, Suite 240, Phoenix, Arizona 85007  
(602) 364-4930 FAX: (602) 364-4931 <https://btr.az.gov/>

- Michael Kolejka, Board Chair, Architect ● Scott Sayles, Board Vice Chair, Civil Engineer
- Bill Nesgood, Board Secretary, Geologist ● Jack Gilmore, Landscape Architect
- Dana Klett, Land Surveyor ● Dr. Clinton Campbell, Public Member
- Jennifer Hobik, Esq, Public Member ● Kileen Lindgren, Public Member
- Stacy Skankey, Esq, Public Member ● Keith Smith, Public Member
- Hayley Bohall, Public Member

**DRAFT MINUTES FOR REGULAR SESSION MEETING**  
1110 W. Washington Street, Board Room 245, Phoenix, Arizona 85007  
**Tuesday, January 30, 2024 –9:00am**

1. **CALL TO ORDER** –The meeting convened at 9:00 a.m., adjourned for a break at 10:54 a.m., reconvened 11:11 a.m., adjourned for a break at 1:05 p.m., reconvened at 1:11 p.m. and adjourned at 1:58 p.m.

2. **ROLL CALL**

**PRESENT**

Michael Kolejka

Scott Sayles

William “Bill” Nesgood

Jack Gilmore

Dana Klett

Stacey Skankey, Esq. –joined at 9:06 a.m.

Keith Smith

Hayley Bohall

**VIRTUAL**

Dr. Clinton Campbell

Jennifer Hobik, Esq. –joined at 9:01 a.m.

Kileen Lindgren –joined at 9:40 a.m., left at 1:13 p.m. and returned at 1:31 p.m.

3. **CALL TO THE PUBLIC**

Aaron Blaisdell, NCEES Western Zone Vice Presidential nominee for the State of Washington appeared before the Board to encourage Arizona’s participation in the Western Zone chapter of NCEES.

4. **ADOPTION OF MINUTES**

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 4(A).*

A. Approve, modify and/or reject, January 5, 2024 Board meeting minutes.

Mr. Sayles moved and Mr. Nesgood seconded to approve the meeting minutes as written; motion carried 9-0.

5. **CONSENT AGENDA**

Items listed on the Consent Agenda will be considered by the Board as a single action item unless a Board Member wishes to remove a specific item for review, discussion, and action separately from the other Consent Agenda items.

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 5(A).*

## A. LICENSING MATTERS

Review, Consideration and Possible Action on the following:

1. Cancel Registrations and Certifications that have been Expired for one Full Renewal Period
2. Grant Applications for Registration/Certification
  - a) Professional Exam unknown
    - 1) Dougherty, David – Application for Registration as a Civil Engineer #2310732
    - 2) Miles, Thomas – Application for Registration as a Civil Engineer #2310650
  - b) Certificate(s) of Experience from non-Professionals
    - 1) Helbren, Justine – Application for Registration as a Civil Engineer #239485
    - 2) Saine, Daniel – Application for Registration as an Electrical Engineer #2310145
    - 3) Sydykov, Abyl – Application for Registration as a Mining Engineer #2310185
    - 4) Lockhart, James – Application for Registration as a Mechanical Engineer #239833
  - c) Council Records – experience under non-Professionals
    - 1) Martinez, Ricardo – Application for Registration as a Control Systems Engineer #2310748
    - 2) Beshay, Beshoy – Application for Registration as an Electrical Engineer #240015
    - 3) Perla, Robert – Application for Registration as a Civil Engineer #239069
    - 4) Roeder Jr., Thomas – Application for Registration as an Electrical Engineer #2310655
  - d) Background Review
    - 1) Beckwith, Arthur – Application for Registration as a Structural Engineer #2310690
    - 2) Garza, Jesus – Application for Registration as an Architect #2310562
    - 3) Lei, Tony – Application for Registration as a Civil Engineer #240026
    - 4) Mandujano, Carlos – Application for Registration as a Mechanical Engineer #2310419
    - 5) Moog, Trygg – Application for Registration as a Civil Engineer #2310733
    - 6) Severn, Guy – Application for Registration as an Electrical Engineer #2310615
    - 7) Hill, Peter – Application for Registration as an Architect #2310402
    - 8) Vestal, Richard – Application for Registration as a Mechanical Engineer #240081
    - 9) Minsinger, Thomas – Application for Registration as a Control Systems Engineer #238995
    - 10) Alley, Erin – Application for Registration as an Architect #2310745
  - e) Disciplinary Action Review  
*Nothing to consider*
3. Grant Universal Applications for Professional Registration/Certification
  - a) Titus, Elizabeth – Application for Registration as a Geologist #2310129
  - b) True, Kimberly – Application for Registration as a Landscape Architect #240036
4. Grant Renewal Registration Application(s)
  - a) Background Review
    - 1) Dailey, Benjamin – Renewal Application for Civil Engineer Registration #59080
  - b) Disciplinary Action
    - 1) Shucri, Yaghi – Renewal Application for Civil Engineer Registration #27666
    - 2) Hakhmaneshi, Manouchehr – Renewal Application for Civil Engineer Registration #72616
    - 3) Stevens, Christopher – Renewal Application for Land Surveyor Registration #16615

5. Approve Application(s) for Exam Waivers
  - a) Application to waive Fundamental Exam
    - 1) Solis, Salvador – Application to waive FE Exam #2310211
    - 2) Moore, Andrew – Application to waive FE exam #2310321
  - b) Application to waive Professional Exam  
*Nothing to consider*
  - c) Multiple Considerations
    - 1) Application to waive SE II exam #2310553
      - i. Background Review
      - ii. Disciplinary Action
      - iii. SE II exam waiver
6. Approve Application(s) for Exam Authorization
  - a) Certificate(s) of Experience from non-Professional
    - 1) Dicker, Amy – Application for ARE exam authorization #239165
7. Grant Applications for In-Training Designation
  - a) Background Review
    - 1) Wickman, Sydney – Application for Engineer-in-Training Designation #2310712
    - 2) Zoucha, John – Application for Engineer-in-Training Designation #240037
8. Extension Requests
  - a) Kottman, Kenneth – Universal Application for Certification as a Home Inspector #239798
  - b) Olson, Brandon – Application for Registration as a Civil Engineer #2310359

Licensing Manager Julie Pham and Applicant Salvador Solis appeared before the Board.

Mr. Gilmore moved and Mr. Sayles seconded to approve items 5(A)(1)-(4), 5(A)(5)(2), 5(A)(5)(b)-(c) and 5(A)(6)-(7) under the consent agenda; motion carried 10-0.

Mr. Sayles requested that item 5(A)(5)(1) be pulled from the consent agenda for further discussion.

Mr. Smith requested that items 5(A)(8)(a) and 5(A)(8)(b) be pulled from the consent agenda for further discussion.

Mr. Smith moved and Ms. Skankey seconded to approve items 5(A)(8)(a) and (b) under the consent agenda; motion carried 10-0.

Mr. Sayles moved and Mr. Nesgood seconded to approve item 5(A)(5)(1) under the consent agenda; motion carried 10-0.

## 6. LICENSING MATTERS

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 6(A).*

### A. Reconsideration of Administrative Closure

- 1) Valencia, Claudio – Application to waive FE exam pursuant to A.R.S. § 32-126(D) #2310039

Licensing Manager Julie Pham and Applicant Claudio Valencia appeared before the Board.

Mr. Sayles moved and Ms. Klett seconded to deny reconsideration of administrative closure for Mr. Valencia's application to waive the FE exam pursuant to A.R.S. § 32-126(D); motion carried 10-0.

## 7. CONSIDERATION OF CASES REFERRED FOR FORMAL HEARING

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 7(A).*

### A. Consideration of a Signed Consent Agreement in lieu of a Formal Hearing:

#### 1. HI23-002, Harold Kunnen, C.H.I. #38065

Respondent, AAG Scott Donald and Independent Advisor AAG Seth Hargraves appeared before the Board.

Mr. Smith moved and Ms. Klett seconded to accept Respondent's signed Consent Agreement and vacate the scheduled hearing; motion carried 11-0.

#### 2. HI22-022, Derek Otto, C.H.I. #54388

Respondent, Respondent's Counsel Bryl Lane, AAG Deanie Reh and Independent Advisor Seth Hargraves appeared before the Board.

Mr. Smith moved and Ms. Skankey seconded to accept Respondent's signed Consent Agreement and vacate the scheduled hearing; motion carried 11-0.

## 8. ENFORCEMENT MATTERS

Review, Consideration and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda items 8(A-F).*

### A. Complaints Proposed for Resolution by Dismissal:

#### 1. P23-115, Mark Tiedemann, Non-Registrant and MWT Architecture, Non-Registrant Firm

Investigator Brandon Eaden appeared before the Board.

Mr. Sayles moved and Ms. Skankey seconded to dismiss case #P23-115; motion carried 11-0.

#### 2. UK24-008, Antonio Perez-Vargas, Non-Registrant and LiveGuard Tech, LLC, Non-Registrant Firm

Respondent and Investigator Brandon Eaden appeared before the Board.

Ms. Skankey moved and Mr. Sayles seconded to dismiss case #UK24-008; motion carried 11-0.

#### 3. HI24-009, Matthew Maxwell, C.H.I. #60042

Respondent, Alleger Charles Dempsey, Alleger Janet Dempsey and Investigator Eric Parriot appeared before the Board.

Ms. Skankey moved and Ms. Lindgren seconded to dismiss case #HI24-009; motion carried 11-0.

4. HI24-018, Cameron Standsberry, Non-Registrant and State 48 Roofing, Non-Registrant Firm

Respondent, Alleger Jeremiah San Mejia and Investigator Brandon Eaden appeared before the Board.

Mr. Smith moved and Ms. Skankey seconded to dismiss case #HI24-018; motion carried 11-0.

5. P23-090, James Paul, Non-Registrant and Urban Engineering Group, Non-Registrant Firm

Investigator Kaitlyn Crawford appeared before the Board.

Ms. Skankey moved and Mr. Sayles seconded to dismiss case #P23-090; motion carried 11-0.

B. Complaints Proposed for Administrative Closure:

1. HI24-029, David Doubrava, C.H.I. #38468 (Deceased)

Investigator Daniel Carthel appeared before the Board.

Ms. Skankey moved and Mr. Sayles seconded to administratively close case #HI24-029; motion carried 11-0.

C. Complaints Proposed for Resolution with Letter of Concern:

1. HI24-013, James Sullivan, C.H.I. #60797

Respondent and Investigator Eric Parriot appeared before the Board. The Board discussed the investigation.

Mr. Smith moved and Ms. Klett seconded to issue Respondent a Letter of Concern; motion carried 11-0.

2. P23-116, Ali Homsy, P.E. (Structural) # 27344

Alleger Tom Cashman and Investigator Kaitlyn Crawford appeared before the Board.

Mr. Gilmore moved and Mr. Sayles seconded to issue Respondent a Letter of Concern; motion carried 10-1. Ms. Lindgren voted nay.

3. HI23-039, Jamie Murfield, C.H.I. #75038

Investigator Brandon Eaden and Enforcement Manager Orlene Loera appeared before the Board.

Mr. Smith moved and Mr. Sayles seconded to issue Respondent a Letter of Concern; motion carried 10-1. Ms. Lindgren voted nay.

4. HI23-040, Mark Kenney, C.H.I. #50338

Investigator Brandon Eaden appeared before the Board.

Mr. Smith moved and Mr. Sayles seconded to issue Respondent a Letter of Concern; motion carried 10-1. Ms. Lindgren voted nay.

5. P24-027, Chad Zielinski, P.E. (Civil) #48129

Respondent and Investigator Daniel Carthel appeared before the Board. The Board discussed the investigation.

Ms. Skankey moved and Ms. Lindgren seconded to dismiss case #P24-027; motion carried 11-0.

D. Complaints Proposed for Resolution with Signed Consent Agreements:

1. HI23-015, Erik Cahn, C.H.I. #68685

Respondent and Investigator Brandon Eaden appeared before the Board. The Board discussed the investigation.

Ms. Lindgren moved and Ms. Skankey seconded to accept Respondent's signed Consent Agreement; motion carried 9-2. Mr. Gilmore and Mr. Smith voted nay.

E. Complaints Proposed for Offer Consent Agreement:

1. P24-029, Susan Link, R.A. #43079

Respondent and Investigator Kaitlyn Crawford appeared before the Board. The Board discussed the investigation.

Mr. Sayles moved and Mr. Smith seconded to offer Respondent the proposed Consent Agreement, and if not signed within 30 days, proceed to a formal hearing; motion carried 9-2. Ms. Lindgren and Ms. Bohall voted nay.

Mr. Sayles moved and Ms. Skankey seconded enter Executive Session to receive legal advice; carried 11-0.

The Board entered Executive Session at 11:37 a.m. and returned to regular session at 11:48 a.m.

F. Complaints Requiring Board Guidance:

1. P23-058, Roberto Hernandez, Non-Registrant and Draft Your Dreams, LLC #19634

Alleger, Mayra Meza-Morales, Investigator Daniel Carthel and Enforcement Manager Orlene Loera appeared before the Board. The Board discussed the investigation.

Ms. Skankey moved and Ms. Lindgren seconded to dismiss case #P23-058; motion carried 10-1. Mr. Smith voted nay.

2. HI23-041, James "Jimmy" Riley, C.H.I. #53987

Respondent and Investigator Kaitlyn Crawford appeared before the Board. The Board discussed the investigation.

Ms. Skankey moved and Mr. Nesgood seconded to dismiss case #HI23-041; motion carried 10-1.

3. P23-104, Nils Bjelde, Non-Registrant and LNB Enterprises, Non-Registrant Firm

Investigator Kaitlyn Crawford appeared before the Board. The Board discussed the investigation.

Ms. Skankey moved and Ms. Lindgren seconded to dismiss case #P23-104; motion carried 11-0.

4. P24-041, James Elson, R.A. #11005

Respondent and Investigator Kaitlyn Crawford appeared before the Board. The Board discussed the investigation.

Mr. Gilmore moved and Ms. Skankey seconded to dismiss case #P24-041; motion carried 11-0.

## 9. POLICY MATTERS

Review, Consideration, and Possible Action on the following:

*The Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(2) (to discuss confidential information), A.R.S. § 38-431.03(A)(3) (to receive legal advice) on agenda item 9(A)-(F). Additionally, the Board may vote to enter executive session pursuant to A.R.S. § 38-431.03(A)(4) (discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation) on agenda item 9(A).*

A. Arizona Supreme Court Docket No. CV-21-0203-PR, 1 CA-CV 20-0510 & CV 2019-013509 – Mills v. Arizona State Board of Technical Registration

AAG Scott Donald report that the Appellants have filed their opening brief and that the state has until February 12 to file a responsive brief.

B. Board Sunset Audit Review Update

Ms. Stapley reported that the House Commerce Committee recommended an 8-year continuation for the Board, but the Senate Government Committee voted to recommend that the Board convert their occupational licenses to a less restrictive regulation.

C. Legislation: HB2100, HB2243, HB2593, HB2253, HB2308, SB1112

Mr. Winter reported on recently introduced legislation that may affect the Board.

D. Forward Final Rulemaking and Economic Impact Statement

Mr. Winter reported that the 30-day public comment period for the Board's supplemental rule package has passed and requested the Board forward the Final Rulemaking and economic impact statement to the Governor's Regulatory Rules Council.

Mr. Sayles moved and Mr. Smith seconded to forward the Board's final rulemaking package and economic impact statement to the Governor's Regulatory Rules Council; motion carried 11-0.

E. Draft Scholarship Fund language / Education Program update

Ms. Stapley reported on updates to the draft scholarship fund language/education program.

F. Proposed Executive Budget

Ms. Stapley reported on the proposed executive budget for FY25.

**10. DIRECTOR'S REPORT**

- A. Budget Update
- B. Previous Meeting Follow-Up
  - a. Online Transition
  - b. Board Staff Updates
  - c. Board Composition
- C. Licensing Numbers
- D. Enforcement Numbers
- E. List of Newly Granted Applicants

Ms. Stapley reported on the Board's budget, the Board's online transition and licensing and enforcement numbers.

**11. ASSISTANT ATTORNEY GENERAL'S REPORT**

Nothing was reported.

**12. STANDING COMMITTEE REPORTS**

- A. Legislation and Rules Committee – No future meeting date at this time
- B. Home Inspector Rules and Standards Committee –No future meeting date at this time

Mr. Winter reported that the Home Inspector Rules and Standards Committee meeting that was scheduled in January was cancelled and will likely be rescheduled in March.

**13. BOARD MEMBER REPORTS/DISCUSSION ON STATE AND NATIONAL COUNCIL ACTIVITIES, NEWS AND MEETINGS**

A. National Association of State Boards of Geology (ASBOG)

Mr. Nesgood reported that he would attend the Spring Council for Examiners in Dallas this April.

B. Council of Landscape Architectural Registration Boards (CLARB)

Nothing was reported.

C. National Council of Architectural Registration Boards (NCARB)

Mr. Kolejka reported that he would attend NCARB's Regional Summit this March in Savannah.

D. National Council of Examiners for Engineering and Surveying (NCEES)

Mr. Sayles reported on discussions being held by NCEES’s Education Subcommittee regarding continuing education.

Ms. Klett reported that she, Mr. Sayles and Ms. Stapley would attend NCEES’s Western Zone Meeting this May in Bozeman, Montana.

Ms. Stapley reported that NCEES is continuing their work with the United Kingdom in developing a mutual recognition agreement and that she and Mr. Sayles will attend a conference in London in February regarding the agreement.

E. Council on Licensure, Enforcement & regulation (CLEAR)

Mr. Winter reported that he attended a symposium held by CLEAR in Tucson, Arizona last month.

F. Federation of Associations of Regulatory Boards (FARB)

Ms. Pham reported on the FARB conference she attended last month in Fort Worth, Texas.

14. **FUTURE BOARD MEETINGS** – February 27, 2024

15. **SUGGESTED TOPICS FOR FUTURE MEETING AGENDAS.**

The Board requested that the Home Inspector Rules and Standards Committee work on developing a definition of “repair” at their next ~~scheduled~~ meeting. The Board ~~requested an update from ICOR~~ regarding incidental work.

16. **MEETING ADJOURNMENT** -1:58 p.m.



Signed this \_\_\_\_ day of February, 2024

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Michael Kolejka, Chairperson

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Judith Stapley, Executive Director

# Arizona Chapter of ASHI

P.O. Box 10843  
Prescott AZ 86301  
(480) 442-2660  
arizonaashi@gmail.com



**October 30, 2023**

To: Arizona Board of Technical Registration,

This letter is to confirm that we, the board members of the Arizona Chapter of ASHI, have approved and adopted on October 27, 2023 by 4 yea vote, 1 absent, version 3.0 Home Inspection Standards that has been drafted by the Home Inspectors Rules and Standards Committee.

Best regards,

**Roger Skaggs**

Roger Skaggs  
President, AZ Chapter of ASHI

# Arizona Home Inspector Pools and Spas Standards of Professional Practice

Adopted April 25, 2023

## TABLE OF CONTENTS

<u>Section</u>	<u>Description</u>
1.	<u>Introduction</u>
2.	<u>Purpose &amp; Scope</u>
3.	<u>Swimming Pools and Spas</u>
4.	<u>General Limitations and Exclusions</u>
<u>Glossary</u>	NOTE: <i>Italicized</i> words are defined in the Glossary

## 1. INTRODUCTION

1.1 These Standards define the practice of Swimming Pool & Spa Inspections in the State of Arizona.

1.2 These Standards of Practice

- A. provide inspection guidelines.
- B. make public the services provided by private fee-paid *inspectors*.

## 2. PURPOSE AND SCOPE

2.1 Inspections performed to these Standards shall provide the *client* with a better understanding of the swimming pool & spa conditions, as *observed* at the time of the inspection.

- A. These Standards apply only to swimming pools and spas installed at a property with a single family residential structure.
- B. Swimming pool/spa is defined as a contained body of water that is eighteen inches or more in depth at any point and this is intended for swimming or immersion.

2.2 *Inspectors shall:*

- A. *Observe readily accessible installed systems* and *components* listed in these Standards.
- B. Submit a written report to the *client* which shall:
  1. *Observe* and *Describe systems* and *components* identified in section 3 of these Standards.
  2. State which *systems* and *components* designated for inspection in these Standards have been inspected and any *systems* and *components* designated for inspection in these Standards which were present at the time of the inspection and were not inspected and a reason why they were not inspected.
  3. State any *systems* and *components* so inspected which were found to be in need of *immediate major repair* and any recommendations to correct, monitor or further *evaluate by appropriate persons*.

2.3 **These Standards are not intended to limit inspectors from:**

- A. Reporting observations and conditions in addition to those required in Section 2.2.
- B. Excluding *systems* and *components* from the inspection if requested by the *client*.

### 3. SWIMMING POOL & SPA

#### 3.1 The *inspector* shall *observe*:

- A. interior finish materials.
- B. decks, steps and *coping*.
- C. pumps, motors, blowers, skimmer, filter, drains, heaters, automatic safety controls, gauges, visible piping and valves.
- D. water supply systems for *cross connections*.
- E. external bonding of the pump motors, blowers, and heaters.
- F. conduit, visible electrical components, and the operation of underwater lighting, ground fault circuit interrupters, and timer assemblies.
- G. permanently installed handrails and ladders.
- H. for the presence of child safe barrier provisions.
- I. for the presence of *entrapment prevention components*.

#### 3.2 The *inspector* shall:

- A. *describe*:
  1. type of pool or spa.
  2. primary interior finish material.
  3. type of filter.
  4. type of *child safe barrier* provision.
  5. type of cleaning system (if present).
  6. energy source for heater (if present).
- B. operate the *systems* using *normal operating controls*.
- C. open *readily open able access panels* provided by the manufacturer or installer for routine homeowner maintenance.

### 4. GENERAL LIMITATIONS AND EXCLUSIONS

#### 4.1 General limitations:

- A. Inspections performed in accordance with these Standards are visual, are not *technically exhaustive* and will not identify concealed conditions or latent defects.

#### 4.2 General exclusions:

- A. *Inspectors* are NOT required to report on:
  1. life expectancy of any *component* or *system*.
  2. the causes of the need for a major repair.
  3. the methods, materials and costs of corrections.
  4. the suitability of the facilities for any specialized use, or the enclosures for systems, components, of equipment.
  5. the condition of *components* that are not visible and/or *readily accessible*.
  6. compliance or non-compliance with applicable regulatory requirements, building codes, or manufacturer instructions, drawings, and specifications.
  7. any *component* or *system* which was not *observed*.
  8. the presence or absence of pests such as wood damaging organisms, rodents, or insects.
  9. external bonding of equipment or components other than pump motors, blowers and heaters.
  10. *cosmetic items*, underground items, or items not permanently *installed*.
  11. the safety of use of any pool or spa component.
  12. the adequacy of operation, maintenance, and use of the pool/spa and of any *component*.

13. whether any item, material, condition or component is subject to recall, controversy, litigation, product liability or other adverse claim or condition.
  14. the structural integrity of any system or component.
  15. the adequacy of system and component design, and of filters and heaters.
  16. the adequacy of child safe barriers and of entrapment prevention components, nor the conformity of these barriers or components with local codes and ordinances.
  17. equipment/component compatibility.
  18. flow rates and high or low pressure conditions.
  19. leaks in the shell or underground components.
  20. geological and soil conditions.
  21. the strength, adequacy, efficiency or safety of any system or component.
- B. Inspectors are NOT required to:
1. observe component interiors that are not readily accessible.
  2. offer warranties or guarantees of any kind.
  3. calculate the strength, adequacy, efficiency or safety of any system or component.
  4. enter any area or perform any procedure which may damage the property or its components or be dangerous to the inspector or other persons.
  5. operate any system or component which is shut down or otherwise inoperable.
  6. operate any system or component which does not respond to normal operating controls.
  7. move personal items, equipment, plant life, soil, snow, ice, or debris which obstructs access or visibility.
  8. determine the presence or absence of any suspected hazardous substance or irritants, including but not limited to noise, toxins, molds, algae, allergens, organisms, carcinogens, electromagnetic radiation, radioactive substances, combustibles, corrosive or reactive chemicals or contaminants, or the adequacy of their storage facilities.
  9. determine the safety of use of any pool or spa component.
  10. dismantle any system or component.
  11. predict future conditions, including but not limited to failure of components.
  12. project operating costs of components.
  13. perform any act or service contrary to law or regulation.
  14. perform architectural, engineering, or surveying services, or to confirm or evaluate such services performed by others.
  15. perform any trade or professional service other than as required in these Standards.
  16. operate systems when weather conditions or other circumstances may cause equipment damage.
  17. test or operate valves and automatic safety controls.
  18. come into contact with pool or spa water to examine the systems, structure, or components.
  19. test, operate, or evaluate electric resistance heaters.
  20. determine the temperature, temperature fluctuation, rate of temperature rise, or the time needed to obtain hot water, of any pool or spa heater.
  21. test, operate, or evaluate water features, fountains, diving and jump boards, slides, and similar play equipment, or evaluate the suitability of the pool or spa for the use of such equipment, or for activities such as diving.
  22. test, operate, or evaluate timers, low voltage or electronic controls, stray voltage, thermostats, heating elements, solar and other alternative energy heating systems.

23. evaluate water chemistry or clarity, or presence or absence of bacteria/algae.
24. operate *systems* including backwash, aerators, automatic cleaners, automatic water fills, water treatment or chemical dispenser systems.
25. evaluate the interior of components and filters including filter cartridges, and related *components* and accessories, or back-flow prevention devices.
26. evaluate the condition of manual, or the condition and operation of automatic, pool or spa covers.
27. observe underground items and items not permanently *installed*.
28. determine the differential between original construction and subsequent additions or modifications, or evaluate out-of-level conditions.

## GLOSSARY

**Automatic Safety Controls:**

Devices designated and *installed* to protect *systems* and *components* from high or low pressures and temperatures, electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other *unsafe* conditions.

**Child Safe Barrier:**

A *component*, such as a fence or a door or a window alarm, that helps restrict access to a swimming pool/spa.

**Client:**

A customer who contracts with an *inspector* for a swimming pool and/or spa inspection.

**Component:**

A *readily accessible* and observable part of a *system*.

**Coping:**

The top sections around a swimming pool or spa perimeter, capping the structural walls of the pool/spa.

**Cosmetic Items:**

Defects that are superficial and that do not significantly affect a *component's* ability to function properly.

**Cross Connection:**

Any physical connection or arrangement between potable water and any source of contamination.

**Dangerous or Adverse Situations:**

Situations which pose a threat of injury to the *inspector*, and those situations that require the use of special protective clothing or safety equipment.

**Describe:**

Report in writing a *system* or *component* by its type, or other observed characteristics, to distinguish it from other *components* used for the same purpose.

**Dismantle:**

To take apart or remove any *component*, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.

**Electronic Controls:**

Digital, computerized, low voltage or solid state equipment operation management devices.

**Entrapment Prevention Components:**

A *component*, such as a suction cover, installed within the swimming pool/spa water circulation system that helps prevent a person from being held underwater at a suction outlet.

**Engineering:**

Any professional service or creative work requiring education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences

**Evaluate by Appropriate Persons:**

Examination and analysis by a qualified professional, tradesman, or service technician using techniques and/or expertise that are beyond the scope of inspection performed in accordance with these Standards.

**Immediate Major Repair:**

A major defect, which if not quickly addressed, will be likely to do any of the following:

1. worsen appreciably
2. cause further damage
3. be a serious hazard to health and/or personal safety

**Inspector:**

A person certified as a home inspector by the Arizona Board of Technical Registration.

**Installed:**

Attached or connected such that the installed item requires tools for removal.

**Major Defect:**

A system or component that is unsafe or not functioning.

**Normal Operating Controls:**

Devices, such as thermostats and switches, intended to be operated by the homeowner.

**Observe:**

The act of making a visual examination of a system or component and reporting on its condition.

**Readily Accessible**

Available for visual inspection without requiring the removal of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

**Readily Open able Access Panel:**

A panel provided for homeowner inspection and maintenance that is readily accessible, within normal reach, can be removed by one person, and is not sealed in place.

**Shut Down:**

A state in which a system or component cannot be operated by normal operating controls.

**Structural Component:**

A component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

**System:**

A combination of interacting or interdependent components, assembled to carry out one or more functions.

**Technically Exhaustive:**

An inspection is technically exhaustive when it involves the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

**Unsafe:**

A condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal, day to day use. The risk may be due to damage, deterioration, or improper installation.

**STANDARDS OF PROFESSIONAL PRACTICE**

**TABLE OF CONTENTS**

Section Description

1. Introduction
2. Purpose & Scope
3. General Limitations & Exclusions
4. Structural Components
5. Exterior
6. Roofing
7. Plumbing
8. Electrical
9. Heating
10. Cooling
11. Interiors
12. Insulation & Ventilation

Glossary NOTE: Italicized words are defined in the Glossary

1. INTRODUCTION

- 1.1 These Standards define the practice of Home Inspection in the State of Arizona.
- 1.2 These Standards of Practice:
  - A. provide inspection guidelines.
  - B. make public the services provided by private fee-paid *Inspectors*.

2. PURPOSE AND SCOPE

- 2.1 Inspections performed to these Standards shall provide the *client* with a better understanding of the property conditions, as *observed* at the time of the inspection.
- 2.2 *Inspectors* shall:
  - A. before the inspection report is delivered, enter into a written agreement with the *client* or their authorized agent that includes:
    1. the purpose of the inspection.
    2. the date of the inspection.
    3. the name, business address and certification number of the *Inspector*.
    4. the fee for services.
    5. a statement that the inspection is performed in accordance with these Standards.
    6. limitations or exclusions of *systems* or *components* inspected.
  - B. *observe readily accessible installed systems and components* listed in these Standards.
  - C. submit a written report to the *client* which shall:
    1. *describe systems and components* identified in sections 4-12 of these Standards.

2. state which *systems* and *components* designated for inspection in these Standards have been inspected and any *systems* and *components* designated for inspection in these Standards which were present at the time of the inspection and were not inspected and a reason why they were not inspected.
3. state the condition of *systems* and *components* so inspected with specifically descriptive or defined terminology.
4. state any *systems* and *components* so inspected which were found to be in need of *immediate major repair* and any recommendations to correct, monitor or evaluate by appropriate persons.

2.3 These Standards are not intended to limit *Inspectors* from:

- A. reporting observations and conditions in addition to those required in Section 2.2.
- B. excluding *systems* and *components* from the inspection if requested by the *client*.

### 3. GENERAL LIMITATIONS AND EXCLUSIONS

3.1 General limitations:

- A. Inspections done in accordance with these Standards are visual, not *technically exhaustive* and will not identify concealed conditions or latent defects.
- B. These standards are applicable to completed buildings as a single-family dwelling, along with their garages and/or carports, and individual dwelling units in a multi-unit building.

3.2 General exclusions:

A. *Inspectors* are NOT required to report on:

1. life expectancy of any *component* or *system*.
2. the causes of the need for a major repair.
3. the methods, materials and costs of corrections.
4. the suitability of the property for any specialized use.
5. compliance or non-compliance with applicable codes or regulatory requirements.
6. the market value of the property or its marketability.
7. the advisability or inadvisability of purchase of the property.
8. any *component* or *system* which was not *observed*.
9. the presence or absence of pests such as wood damaging organisms, rodents, or insects.
10. cosmetic items, underground items, or items not permanently *installed*.
11. property boundary lines or encroachments.
12. product recalls or conformance with manufacturers' installation instructions.
13. the insurability of the property.

B. *Inspectors* are NOT required to:

1. offer warranties or guarantees of any kind.
2. calculate the strength, adequacy, or efficiency of any *system* or *component*.
3. enter any area or perform any procedure which may damage the property or its *components*, or be dangerous to the *Inspector* or other persons.
4. operate any *system* or *component* which is *shut down* or otherwise inoperable.
5. operate any *system* or *component* which does not respond to *normal operating controls*.
6. disturb insulation, move personal items, furniture, equipment, plant life, soil, snow, ice, or debris which obstructs access or visibility.

7. determine the presence or absence of any suspected environmental hazards including but not limited to toxins, fungus, molds, mold spores, mildew, radon, electromagnetic radiation, carcinogens, noise, electromagnetic fields, hazardous waste, contaminants in building *components*, soil, water, and air.
8. determine the effectiveness of any *system installed* to control or remove suspected hazardous substances.
9. predict life expectancy, future conditions, including but not limited to failure of *components*.
10. project operating costs of *components*.
11. evaluate acoustical characteristics of any *system* or *component*.
12. determine the age of the structure, or *component* of a building, or differentiate between original construction, and subsequent additions, improvements, replacements or renovations.
13. *observe* any *system*, *component* or any non-*primary function* that is not included in these Standards.

3.3 Limitations and exclusions specific to individual *systems* are listed in following sections.

#### 4. SYSTEM: STRUCTURAL COMPONENTS

4.1 The *Inspector* shall *observe*:

A. *structural components* including:

1. foundation.
2. floors.
3. walls.
4. columns.
5. ceilings.
6. roofs.

4.2 The *Inspector* shall:

A. *describe* the type(s) of:

1. foundation.
2. floor structure.
3. wall structure.
4. ceiling structure.
5. roof structure.

B. enter *underfloor crawl spaces* and attic spaces except when:

1. access is obstructed;
2. the clearance is less than a nominal sixteen inches by twenty-four inches;
3. when entry could damage the property; or,
4. when *dangerous or adverse situations* are suspected.

C. report the methods used to inspect *underfloor crawl spaces* and attics.

D. report signs of water penetration into the building or signs of condensation on building *components*.

#### 5. SYSTEM: EXTERIOR

5.1 The *Inspector* shall *observe*:

A. wall cladding, flashings and trim.

- B. entryway doors and *representative number* of windows.
- C. garage vehicle doors and door operators.
- D. decks, balconies, stoops, steps, areaways, and porches including railings.
- E. eaves, soffits and fascias.
- F. vegetation, grading, drainage, driveways, patios, walkways and retaining walls with respect to any apparent adverse effect on the condition of the building.

5.2 The *Inspector* shall:

- A. *describe* wall-cladding materials.
- B. operate a *representative number* of windows and all entryway doors, including garage vehicle doors, manually or by using permanently *installed* controls of any garage door operator.
- C. report whether or not any garage vehicle door operator will automatically reverse when tested using any available method.

5.3 The *Inspector* is NOT required to *observe*:

- A. storm windows, storm doors, screening, shutters, awnings and similar seasonal accessories.
- B. fences.
- C. *safety glazing*.
- D. garage vehicle door remote control transmitters.
- E. geological conditions.
- F. soil conditions.
- G. *recreational facilities*.
- H. outbuildings other than garages and carports.
- I. coatings on and the hermetic seals between panes of glass.

## 6. SYSTEM: ROOFING

6.1 The *Inspector* shall *observe*:

- A. roof coverings.
- B. visible portions of *roof drainage systems*.
- C. flashings.
- D. skylights, chimneys and roof penetrations.
- E. signs of leaks or abnormal condensation on building *components*.

6.2 The *Inspector* shall:

- A. *describe* the type of roof covering materials.
- B. report the methods used to inspect roofing.

6.3 The *Inspector* is NOT required to:

- A. walk on the roofing.
- B. *observe* attached accessories including but not limited to solar *systems*, antennae, and lightning arresters.
- C. *observe* underground *roof drainage systems*.

## 7. SYSTEM: PLUMBING

7.1 The *Inspector* shall *observe*:

- A. interior water supply and distribution *system* including:
  - 1. piping materials, including supports and insulation.
  - 2. fixtures and faucets.

3. *functional flow*.
4. leaks.
5. *cross connections*.

B. interior drain, waste and vent *system*, including:

1. traps, drain, waste, and vent piping; piping supports and pipe insulation.
2. leaks.
3. *functional drainage*.

C. hot water *systems* including:

1. water heating equipment.
2. *normal operating controls*.
3. *automatic safety controls*.
4. chimneys, flues and vents.

D. fuel storage and distribution *systems* including:

1. interior fuel storage equipment, supply piping, venting and supports.

E. drainage sump pumps.

F. waste ejector pumps.

7.2 The *Inspector* shall:

A. *describe*:

1. visible water supply and distribution piping materials.
2. visible drain, waste and vent piping materials.
3. water heating equipment and energy source.
4. location of the main water and main fuel shutoff valves

B. operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house.

C. operate jetted bathtubs.

7.3 The *Inspector* is NOT required to:

A. state the effectiveness of anti-siphon devices.

B. determine whether water supply and waste disposal *systems* are public or private.

C. operate *automatic safety controls*.

D. operate any valve except water closet flush valves, fixture faucets and hose faucets.

E. operate drainage sump pumps.

F. *observe*:

1. water conditioning *systems*.
2. fire and lawn sprinkler *systems*.
3. *on-site water supply quantity and quality*.
4. on-site waste disposal *systems*.
5. foundation irrigation *systems*.
6. solar water heating *systems*.

## 8. SYSTEM: ELECTRICAL

8.1 The *Inspector* shall *observe*:

A. service entrance conductors.

- B. service equipment, grounding equipment, main overcurrent device, main and distribution panels.
- C. amperage and voltage ratings of the service.
- D. branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages.
- E. the operation of a *representative number of installed* lighting fixtures, switches and polarity and grounding of receptacles located inside the house, garage, and on its exterior walls.
- F: the presence or absence of *GFCI* and *AFCI* protection.
- G: operation of *readily accessible GFCI* devices.
- H: the presence or absence of smoke alarms.
- I: the presence or absence of carbon monoxide alarms.

8.2 The *Inspector* shall:

- A. *describe*:
  1. service amperage and voltage.
  2. branch circuit conductor materials.
  3. service type as being overhead or underground.
  4. location of main disconnect(s), main panel and sub panels.

8.3 The *Inspector* is NOT required to:

- A. insert any tool, probe or testing device inside the panels.
- B. test or operate any electrical disconnect or overcurrent protection device, including *AFCI* devices.
- C. *dismantle* any electrical device or control other than to remove covers of the main and sub panels.
- D. test smoke or carbon monoxide alarms.
- E. *observe*
  1. low voltage electrical *components* and *systems*.
  2. telephone, security, cable TV, intercom, audio-video, home network, wifi *systems*, *electronic controls* or any *components* that are not a part of the primary electrical *distribution system*.
  3. geothermal, solar, wind, and other renewable energy *systems*.

## 9. SYSTEM: HEATING

9.1 The *Inspector* shall *observe*:

- A. permanently *installed* heating *systems* including:
  1. heating equipment.
  2. *normal operating controls*.
  3. *automatic safety controls*.
  4. chimneys, flues and vents.
  5. *distribution systems*.
  6. air filters.
  7. the presence or absence of an *installed* heat source in each *habitable space*.
- B. fuel-burning fireplaces and appliances including, but not limited to:
  1. manufactured fireplaces, freestanding stoves, and fireplace inserts.
  2. accessories *installed* in fireplaces.
  3. chimneys, flues, dampers, and vents.

4. mantles, hearth, floor protection and wall protection.

9.2 The *Inspector* shall:

A. *describe*:

1. primary energy source.
2. heating equipment type.
3. distribution type.

B. operate the *systems* using *normal operating controls*.

C. open *readily openable access panels* provided by the manufacturer or installer for routine homeowner maintenance.

9.3 The *Inspector* is NOT required to:

A. operate heating *systems* when weather conditions or other circumstances may cause equipment damage.

B. operate *automatic safety controls*.

C. ignite or extinguish solid fuel fires, or move fireplace inserts and stoves or firebox contents.

D. *observe*:

1. the interior of flues.
2. humidifiers.
3. electronic air filters.
4. the uniformity or adequacy of heat supply to the various rooms.
5. the function and efficiency of multi-zone HVAC *system* dampers and thermostats.
6. seals and gaskets.
7. adequacy of combustion air *components*.
8. draft characteristics.
9. window or portable heating *systems*.
10. fireplace insert flue connections.
11. automatic fuel feed devices.
12. heat distribution assists (gravity fed and fan assisted).
13. fuel-burning fireplaces and appliances located outside the inspected structures.
14. glass enclosures and screens.

## 10. SYSTEM: COOLING

10.1 The *Inspector* shall *observe*:

A. permanently *installed* cooling *systems* including:

1. cooling equipment.
2. *normal operating controls*.
3. *distribution system*.
4. air filters.
5. the presence or absence of an *installed* cooling source in each *habitable space*.

10.2 The *Inspector* shall:

A. *describe*:

1. energy source.
2. cooling equipment type.
3. distribution type.

B. operate the *systems* using *normal operating controls*.

- C. open *readily openable access panels* provided by the manufacturer or installer for routine homeowner maintenance.
- 10.3 The *Inspector* is NOT required to:
- A. operate cooling *systems* when weather conditions or other circumstances may cause equipment damage.
  - B. *observe* window or portable air conditioners.
  - C. *observe* the uniformity or adequacy of cool-air supply to the various rooms.

## 11. SYSTEM: INTERIORS

- 11.1 The *Inspector* shall *observe*:
- A. walls, ceiling and floors.
  - B. steps, stairways, balconies and railings.
  - C. counters and a *representative number* of cabinets.
  - D. a *representative number* of doors and windows.
  - E. separation walls, ceilings, and doors between a dwelling unit and an attached garage or another dwelling unit.
  - F. *installed* ovens, ranges, surface cooking appliances, microwave ovens, dishwashing machines and food waste grinders by using *normal operating controls* to activate the *primary functions*.
- 11.2 The *Inspector* shall:
- A. operate a *representative number* of windows and interior doors.
  - B. report signs of water penetration into the building or signs of abnormal or harmful condensation on building *components*.
  - C. report absence of *secondary fire egress* from bedrooms.
- 11.3 The *Inspector* is NOT required to *observe*:
- A. paint, wallpaper and other finish treatments on the interior walls, ceilings, and floors.
  - B. carpeting.
  - C. draperies, blinds or other window treatments.
  - D. *recreational facilities* or another dwelling unit.
  - E. non-primary features of any *observed* appliance.
  - F. *installed* and freestanding kitchen and laundry appliances not listed in section 11.1.F

## 12. SYSTEM: INSULATION & VENTILATION

- 12.1 The *Inspector* shall *observe*:
- A. insulation and vapor retarders in unfinished spaces.
  - B. ventilation of attics and foundation areas.
  - C. kitchen, bathroom, and laundry venting *systems*.
- 12.2 The *Inspector* shall *describe*:
- A. presence or absence of insulation and vapor retarders in unfinished spaces.
- 12.3 The *Inspector* is NOT required to report on:
- A. concealed insulation and vapor retarders.
  - B. venting equipment which is integral with household appliances.

## GLOSSARY

**Arc Fault Circuit Interrupter (“AFCI”):**

A type of safety device that is designed to quickly shut-off electric power in the event of arcing.

**Automatic Safety Controls:**

Devices designed and *installed* to protect *systems* and *components* from *unsafe* conditions.

**Client:**

A customer who contracts with a home *Inspector* for a home inspection.

**Component:**

A *readily accessible* and observable aspect of a *system*, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the *system*.

**Cross Connection:**

A physical connection or arrangement between potable water and any source of contamination.

**Dangerous or Adverse Situations:**

Situations which pose a threat of injury to the *Inspector*, and those situations that require the use of special protective clothing or safety equipment.

**Describe:**

Report in writing a *system* or *component* by its type, or other *observed* characteristics, to distinguish it from other *components* used for the same purpose.

**Dismantle:**

To take apart or remove any *component*, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.

**Distribution System(s):**

*Components* including but not limited to; fans, ducts with supports, fan coil units, registers, insulation, pumps, pipes and lines with supports, radiators, and convectors that are used for supplying heating or cooling in *habitable spaces*.

**Electronic Controls:**

Digital, computerized, low-voltage or solid-state operating devices.

**Functional Drainage:**

A drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

**Functional Flow:**

A reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

**Ground Fault Circuit Interrupter (“GFCI”):**

A type of safety device that is designed to quickly shut-off electric power in the event of a hot and neutral imbalance.

**Habitable Space:**

A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable rooms.

**Immediate Major Repair:**

A *major defect*, which if not quickly addressed, will be likely to do any of the following:

1. worsen appreciably
2. cause further damage
3. be a serious hazard to health and/or personal safety

**Inspector:**

A person certified as a Home *Inspector* by the Arizona Board of Technical Registration.

**Installed:**

Attached or connected such that the *installed* item requires tools for removal.

**Major Defect:**

A *system* or *component* that is *unsafe* or the *primary function* is not working properly.

**Normal Operating Controls:**

Homeowner operated devices such as a thermostat, wall switch or safety switch.

**Observe:**

The act of making a visual examination of the *primary function* of a *system* or *component* and reporting on its Condition.

**On-site Water Supply Quality:**

Water quality is based on the bacterial, chemical, mineral and solids content of the water.

**On-site Water Supply Quantity:**

Water quantity is the rate of flow of water.

**Primary Function:**

The function of a device that is most reasonably apparent such as heat provided at elements or burners at a stove/oven, but not added features such as clocks, calibration, temperature settings, induction, convection or other characteristics.

**Readily Accessible:**

Available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

**Readily Openable Access Panel:**

A panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not sealed in place. Limited to those panels within normal reach or from a 4-foot stepladder, and otherwise *readily accessible*.

**Recreational Facilities:**

Spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities.

**Representative Number:**

For multiple identical *components* such as windows and electrical outlets, the inspection of one such *component* per room. For multiple identical exterior *components*, the inspection of one such *component* on each side of the building.

**Roof Drainage Systems:**

Gutters, scuppers, roof drains, downspouts, leaders, splash blocks, and similar *components* used to carry water off a roof and away from a building.

**Safety Glazing:**

Tempered glass, wired glass, laminated glass, or rigid plastic.

**Secondary Fire Egress:**

Openings, such as doors or windows, that allow direct access to the exterior of the structure from bedrooms.

**Shut Down:**

A piece of equipment whose safety switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a *system* that cannot be operated by the device or control that a home owner should normally use to operate it.

**Structural Component:**

A *component* that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

**System:**

A combination of interacting or interdependent *components*, assembled to carry out one or more functions.

**Technically Exhaustive:**

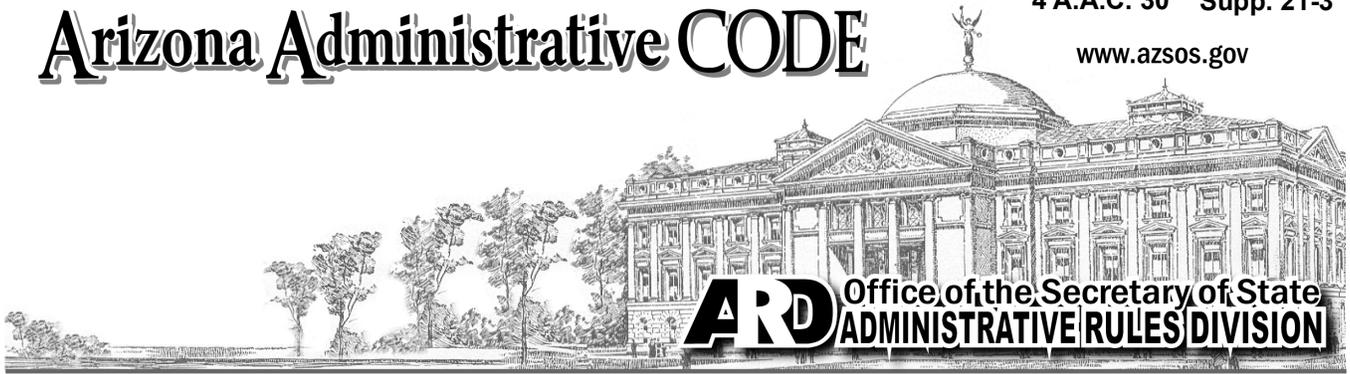
An inspection is technically exhaustive when it involves the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

**Underfloor Crawl Space:**

The area within the confines of the foundation and between the ground and the underside of the lowest floor structural.

**Unsafe:**

A condition in a *readily accessible, installed system or component* that is judged by the *Inspector* to be a significant risk of serious bodily injury during normal day-to-day use.



## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2021 through September 30, 2021

*Due to a typographical error, the website address to the Arizona Professional Land Surveyors (APLS) referenced in R4-30-301(13) has been corrected at the request of the Board. No other changes have been made to this file since Supp. 21-1 (Supp. 21-3).*

#### Questions about these rules? Contact:

Board: Board of Technical Registration  
Address: 1110 W. Washington St., Ste. 240  
Phoenix, AZ 85007  
Website: <https://btr.az.gov>  
Name: Heather Broaddus, Deputy Directory  
Telephone: (602) 364-4933  
E-mail: [heather.broaddus@azbtr.gov](mailto:heather.broaddus@azbtr.gov)

#### The release of this Chapter in Supp. 21-3 replaces Supp. 21-1, 1-25 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

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Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note

to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

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It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing Chapters using these paper colors.

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*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

Administrative Rules Division  
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**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

Authority: A.R.S. § 32-101 et seq.

**Supp. 21-3**

*Chapter 30, consisting of Sections R4-30-101 through R4-30-126, R4-30-201 through R4-30-284, and R4-30-301 through R4-30-307, adopted effective August 3, 1983.*

*Former Chapter 30, consisting of Sections R4-30-01 through R4-30-04, R4-30-13 through R4-30-19, R4-30-27 through R4-30-31, R4-30-41 through R4-30-43, R4-30-52 through R4-30-56, R4-30-66, and R4-30-76, repealed effective August 3, 1983.*

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. GENERAL PROVISIONS**

Section		R4-30-211.	Repealed .....	14
R4-30-101.	Definitions .....	R4-30-212.	Expired .....	14
R4-30-102.	Home Inspection Definitions .....	R4-30-213.	Reserved .....	14
R4-30-103.	Repealed .....	R4-30-214.	Architect Registration .....	14
R4-30-104.	Repealed .....	R4-30-215.	Reserved .....	14
R4-30-105.	Repealed .....	R4-30-216.	Reserved .....	14
R4-30-106.	Fees .....	R4-30-217.	Reserved .....	14
R4-30-107.	Registration and Certification Expiration Dates ..	R4-30-218.	Reserved .....	14
R4-30-108.	Reserved .....	R4-30-219.	Reserved .....	14
R4-30-109.	Reserved .....	R4-30-220.	Reserved .....	14
R4-30-110.	Reserved .....	R4-30-221.	Engineering Branches Recognized .....	14
R4-30-111.	Reserved .....	R4-30-222.	Engineer-In-Training Designation .....	15
R4-30-112.	Reserved .....	R4-30-223.	Reserved .....	16
R4-30-113.	Reserved .....	R4-30-224.	Engineer Registration .....	16
R4-30-114.	Reserved .....	R4-30-225.	Reserved .....	16
R4-30-115.	Reserved .....	R4-30-226.	Reserved .....	16
R4-30-116.	Reserved .....	R4-30-227.	Reserved .....	16
R4-30-117.	Reserved .....	R4-30-228.	Reserved .....	16
R4-30-118.	Reserved .....	R4-30-229.	Reserved .....	16
R4-30-119.	Reserved .....	R4-30-230.	Reserved .....	16
R4-30-120.	Complaint Review Process .....	R4-30-231.	Reserved .....	16
R4-30-121.	Investigation of Violations .....	R4-30-232.	Reserved .....	16
R4-30-122.	Issuance of Subpoenas .....	R4-30-233.	Reserved .....	16
R4-30-123.	Informal Compliance Procedures .....	R4-30-234.	Reserved .....	16
R4-30-124.	Repealed .....	R4-30-235.	Reserved .....	16
R4-30-125.	Reserved .....	R4-30-236.	Reserved .....	16
R4-30-126.	Service of Board Decisions; Rehearing of Board Decisions .....	R4-30-237.	Reserved .....	16
		R4-30-238.	Reserved .....	16
		R4-30-239.	Reserved .....	16
		R4-30-240.	Reserved .....	16
		R4-30-241.	Reserved .....	16
		R4-30-242.	Geologist-in-training Designation .....	16
		R4-30-243.	Reserved .....	17
		R4-30-244.	Geologist Registration .....	17
		R4-30-245.	Reserved .....	17
		R4-30-246.	Reserved .....	17
		R4-30-247.	Home Inspector Certification .....	17
		R4-30-248.	Reserved .....	18
		R4-30-249.	Reserved .....	18
		R4-30-250.	Reserved .....	18
		R4-30-251.	Reserved .....	18
		R4-30-252.	Repealed .....	18
		R4-30-253.	Reserved .....	18
		R4-30-254.	Landscape Architect Registration .....	18
		R4-30-255.	Reserved .....	19
		R4-30-256.	Reserved .....	19
		R4-30-257.	Reserved .....	19

**ARTICLE 2. REGISTRATION PROVISIONS**

Section	
R4-30-201.	Registration as an Architect, Engineer, Geologist, Landscape Architect, or Land Surveyor .....
R4-30-202.	In-training Designation .....
R4-30-202.01.	Repealed .....
R4-30-203.	Waiver of Examination .....
R4-30-204.	Examinations .....
R4-30-205.	Reserved .....
R4-30-206.	Repealed .....
R4-30-207.	Renumbered .....
R4-30-208.	Education and Work Experience .....
R4-30-209.	Time-frames for Professional Registration, Certification, or In-training Designation .....
R4-30-210.	Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or Fundamentals Examination .....

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

R4-30-258.	Reserved .....	19	R4-30-280.	Reserved .....	19
R4-30-259.	Reserved .....	19	R4-30-281.	Reserved .....	19
R4-30-260.	Reserved .....	19	R4-30-282.	Land Surveyor-in-training Designation .....	19
R4-30-261.	Reserved .....	19	R4-30-283.	Reserved .....	20
R4-30-262.	Repealed .....	19	R4-30-284.	Land Surveyor Registration .....	20
R4-30-263.	Reserved .....	19			
R4-30-264.	Repealed .....	19			
R4-30-265.	Reserved .....	19			
R4-30-266.	Reserved .....	19			
R4-30-267.	Reserved .....	19			
R4-30-268.	Reserved .....	19			
R4-30-269.	Reserved .....	19			
R4-30-270.	Repealed .....	19			
R4-30-271.	Repealed .....	19			
R4-30-272.	Repealed .....	19			
R4-30-273.	Reserved .....	19			
R4-30-274.	Reserved .....	19			
R4-30-275.	Reserved .....	19			
R4-30-276.	Reserved .....	19			
R4-30-277.	Reserved .....	19			
R4-30-278.	Reserved .....	19			
R4-30-279.	Reserved .....	19			

<b>ARTICLE 3. REGULATORY PROVISIONS</b>					
	Section				
R4-30-301.	Rules of Professional Conduct .....	20			
R4-30-301.01.	Home Inspector Rules of Professional Conduct .....	21			
R4-30-302.	Electrical Plans .....	21			
R4-30-303.	Securing Seals .....	22			
R4-30-304.	Use of Seals .....	22			
R4-30-305.	Repealed .....	23			
R4-30-306.	Securing and Using Identifying Markers .....	23			
R4-30-307.	Repealed .....	23			
Appendix A.	Sample Seals .....	24			
Appendix B.	Repealed .....	25			
Appendix C.	Repealed .....	25			
Appendix D.	Repealed .....	25			
Appendix E.	Repealed .....	25			
Appendix F.	Repealed .....	25			

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

## ARTICLE 1. GENERAL PROVISIONS

## R4-30-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. "Act" means the Technical Registration Act, A.R.S. Title 32, Chapter 1.
2. "Active engagement" means actually practicing or providing architectural, engineering, geological, landscape architectural, or land surveying services.
3. "Bona fide employee" means:
  - a. Any person employed by a town, city, county, state, or federal agency working under the direction or supervision of a registrant;
  - b. Any person employed by a business entity and working under the direct supervision of a registrant who is also employed by the same business entity; or
  - c. Any person working under the direct supervision of a registrant who:
    - i. Receives direct wages from the registrant;
    - ii. Receives contract compensation from the registrant; or
    - iii. Receives direct wages from the project prime professional who has a contract with another registrant and whose work product is the responsibility of the latter registrant.
4. "Branch" means a specialty area within the category of engineering.
5. "Category" means the professions of architecture, geology, engineering, landscape architecture, and land surveying.
6. "De minimis violations" means violations of Board statutes or rules that do not present a threat to public welfare, health, or safety.
7. "Design team" means a group of individuals that includes one or more professional registrants collaborating with any other individuals on a specific project to develop professional documents.
8. "Detached single family dwelling" as used in the Act means a single family dwelling unit such as a house, which is structurally and physically separate from all other family dwelling units. This does not mean any single family dwelling unit which is part of a multiple dwelling unit building such as a duplex, townhouse, apartment building, condominium, or cooperative. The term "detached single family dwelling" also includes all subsidiary buildings, structures and improvements such as garage, storage areas, swimming pool, and landscaping.
9. "Direct supervision" means a registrant's critical examination and evaluation of a bona fide employee's work product, during and after the preparation, for purposes of compliance with applicable laws, codes, ordinances, and regulations pertaining to professional practice.
10. "Experience" is classified as follows:
  - a. "Subprofessional experience" means task work done under direct supervision and not falling within the definition of professional experience, including but not limited to time spent as a rodman, chainman, recorder, instrument technician, survey aide, technician, clerk of the works, or similar work.
  - b. "Professional experience" means a diversity of work calling for substantial technical knowledge, skill, and responsibility as well as a lesser degree of supervision necessary to ensure that good judgment is applied to protect the public during the course and scope of projects.
  - c. "Responsible charge experience" means work in the field or in the office, where the applicant/registrant had responsibility for the direction of the work and its successful accomplishment and where the applicant/registrant had to make professional decisions without relying on advice or instructions from or first referring the decisions for approval to a superior.
  - d. "Design experience" means professional experience, including work defined under "responsible charge experience," where the applicant/registrant must fulfill the requirements of local circumstances and conditions and yet not violate any of the requirements of the profession and ensure that the executed plan meets the purpose for which it was designed.
11. "Federal agency" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.
12. "Good moral character and repute" means that the registration or certification applicant/registrant:
  - a. Has not been convicted of a felony or equivalent offense in another jurisdiction as defined in A.R.S. § 13-601.
  - b. Has not been convicted of misdemeanor or equivalent offense in another jurisdiction if the offense has a reasonable relationship to the functions of the employment or category for which the registration, certification, or designation is sought;
  - c. Has not, within five years of application for registration or certification, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the candidate's proposed area of practice;
  - d. Is not currently incarcerated in a penal institution;
  - e. Has not engaged in fraud or misrepresentation in connection with the application for registration, certification, or related examination;
  - f. Has not had a registration or certification revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action;
  - g. Has not practiced without the required technical registration or certification in this state or in another jurisdiction within the two years immediately preceding the filing of the application for registration or certification; and
  - h. Has not, within five years of application for registration or certification, committed an act that would constitute unprofessional conduct, as set forth in R4-30-301 or R4-30-301.01.
13. "Gross negligence" means a substantial deviation in professional practice from the standard of professional care exercised by members of the applicant's/registrant's profession, or a substantial deviation from any technical standards issued by a nationally recognized professional organization comprised of members of the applicant's/registrant's profession, or a substantial deviation from requirements contained in state, municipal, and county laws, ordinances, and regulations pertaining to the registrant's professional practice.
14. "Incompetence" means to lack the professional qualifications, experience, or education to undertake a professional engagement or assignment.
15. "Insufficient evidence to support disciplinary action" means:

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

- a. The Board determines there was no evidence to warrant disciplinary action, but believes that continuation of the actions leading to the investigation may result in future Board action against the registrant; or
  - b. The Board determines that there were de minimis violations of Board statutes or rules, but no disciplinary action should be taken against the certification or registration and that a letter of concern would be as effective a resolution as a letter of reprimand in deterring future violations of a like nature.
16. "Other misconduct" means the applicant/registrant:
    - a. Has knowingly acted in violation or knowingly failed to act in compliance with any provisions of the Act, or rules of the Board or any state, municipal, or county law, code, ordinance, or regulation pertaining to the practice of the applicant's/registrant's profession; or
    - b. Has refused to respond fully to a Board inquiry relating to an applicant's/registrant's qualifying experience, or provided the Board with false information relating to an applicant's/registrant's qualifying experience.
  17. "Practicing" means offering or performing professional services regulated by the Act within the state of Arizona.
  18. "Prepared" means to exercise direct supervision over the preparation of professional documents.
  19. "Professional documents" mean the professional work product of a registrant that requires professional judgment, design, analysis, or conclusions, including original plans, drawings, maps, plats, reports, written opinions, specifications, and calculations.
  20. "Project Prime Professional" means the registrant is responsible for the coordination, continuity, and compatibility of each collaborating registrant's work (when retained by the project prime professional).
  21. "Public works" project means a work or undertaking that is financed, in whole or in part, by a federal agency or by a state public body, as defined in this Article.
  22. "Registrant" means a person or firm who has been granted registration or certification to practice any profession regulated pursuant to the Act.
  23. "Retired from active practice" means that the registrant no longer performs professional services.
  24. "State public body" means the state or a county, city, town, municipal corporation, authority, or any other subdivision, agency, or instrumentality of such an entity, corporate or otherwise.
  25. "Structure" as used in the Act means any constructed or designed improvement or improvements to real property including all onsite improvements, fixed equipment, and landscaping, pursuant to an engagement or project.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 968, effective May 5,

2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-102. Home Inspection Definitions**

The following definitions apply to home inspection requirements in this Chapter:

1. "Parallel Inspection" means a home inspection completed by an applicant during the application process that is supervised by a certified home inspector acting as the Parallel Inspector, in the presence of no more than three other applicants. The applicant shall produce a written report for each Parallel Inspection, which the supervising certified home inspector, serving as the Parallel Inspector, shall review, analyze, correct, and return to the applicant within 10 calendar days after receiving the written report. The Parallel Inspector shall notate and instruct the applicant so that each report meets the Standards of Professional Practice for Arizona Home Inspectors. The applicant shall not perform any fee-paid Home Inspections during this Parallel Inspection period.
2. "Parallel Inspector" means an Arizona Certified Home Inspector who performs parallel inspections for a home inspector applicant so that the applicant can obtain a certification to conduct home inspections. A Parallel Inspector shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding three years. The Parallel Inspector shall have been continuously certified by the Board as a Home Inspector for at least three years and shall have conducted at least 250 fee-paid home inspections in the State of Arizona. The Applicant shall provide a signed Affidavit from the Parallel Inspector affirming that the Parallel Inspector has met this criteria to the Board with the application for certification.
3. "Peer Review" means a home inspection performed alongside a supervising Peer Reviewer in order to comply with the terms of Board ordered discipline. The Arizona Certified Home Inspector subject to Board ordered discipline shall, at the conclusion of each Peer Review, submit a written Home Inspection Report to the Peer Reviewer for analysis and review. The Peer Reviewer shall notate and instruct the Arizona Certified Home Inspector subject to Board ordered discipline in order for the report to meet the Standards of Professional Practice for Arizona Home Inspectors. The Arizona Certified Home Inspector subject to Board ordered discipline shall not perform any fee-paid Home Inspections during this Peer Review period.
4. "Peer Reviewer" means an Arizona Certified Home Inspector performing peer review inspections for a home inspector subject to Board ordered discipline so that inspector can fulfill the terms of the ordered discipline. A Peer Reviewer shall be in good standing with the Board and shall not have received any disciplinary action from the Board within the preceding three years. The Peer Reviewer shall have been continuously certified by the Board as a home inspector for at least five years and shall have conducted at least 250 fee-paid home inspections in the State of Arizona. The Arizona Certified Home Inspector subject to Board ordered discipline shall provide the Board with a signed Affidavit from the Peer Reviewer affirming that the Peer Reviewer has met these criterion at the conclusion of each peer review inspection.
5. "Report Checklist Supplement" a tool designed to assist home inspector applicants, parallel inspectors, peer reviewers, application reviewers, enforcement advisory evaluators and certified home inspectors when reviewing or filling out an application for home inspector certifica-

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

tion and a home inspection report. The “Report Checklist Supplement” is not a substitute for the current version of the “Standards of Professional Practice.”

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended under A.R.S. § 41-1033(J) at 25 A.A.R. 3323, effective April 24, 2019 (Supp. 19-2).

**R4-30-103. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-104. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

**R4-30-105. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

**R4-30-106. Fees**

- A.** The Board shall charge the following fees:
1. A computer generated list of registrants for a non-commercial purpose is \$0.25 per name, with a maximum fee of \$300.00.
  2. A computer generated list of registrants for a commercial purpose is \$0.25 per name, with a minimum fee of \$250.00.
  3. The photocopy fee is \$1.00 for up to three pages followed by a \$0.25 fee for each additional page.
  4. The replacement certificate fee for registrants and certificate holders is \$10.00 per certificate.
  5. The recording medium copy fee is \$15.00 per recording.
  6. The local examination review fee is \$30.00 per hour.
  7. The returned check fee is \$25.00 per check.
  8. The verification of registration or certification fee is \$25.00 per verification.
  9. The laminated pocket card fee is \$10.00 per card.
- B.** A person paying fees shall remit them in United States dollars in the form of cash, check, money order, or credit card. If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of cash, money order, or certified check.
- C.** Upon written request, the Board shall waive renewal fees for registrants whose registration is in inactive status.

- D.** Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Emergency amendments adopted effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted without change effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments readopted without change effective February 13, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments readopted without change effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency amendments readopted with changes effective October 22, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency amendments permanently adopted with changes effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective January 12, 1996 (Supp. 96-1). Amended effective January 15, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-107. Registration and Certification Expiration Dates**

- A.** Registrants with triennial registration have expiration dates based on the date of initial registration. The following table indicates triennial registration renewal periods:

Initial Registration Granted Date	Initial Triennial Renewal Expiration Date
Jan. 1 through Mar. 31	Three years from Mar. 31
Apr. 1 through Jun. 30	Three years from Jun. 30
Jul. 1 through Sept. 30	Three years from Sept. 30
Oct. 1 through Dec. 31	Three years from Dec. 31

- B.** Subsequent triennial renewal dates will be three years from the initial triennial renewal expiration date.
- C.** All annual registrations and certifications expire one year from the date of issuance.
- D.** Alarm business certifications expire three years from the date the certification is granted and subsequently every three years thereafter.
- E.** Alarm controlling persons and alarm agent certifications expire three years from the date the certification was granted and subsequently every three years thereafter.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1).

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-108. Reserved**

**R4-30-109. Reserved**

**R4-30-110. Reserved**

**R4-30-111. Reserved**

**R4-30-112. Reserved**

**R4-30-113. Reserved**

**R4-30-114. Reserved**

**R4-30-115. Reserved**

**R4-30-116. Reserved**

**R4-30-117. Reserved**

**R4-30-118. Reserved**

**R4-30-119. Reserved**

**R4-30-120. Complaint Review Process**

- A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to serve on enforcement advisory committees ("EACs"). The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. When practicable, each committee shall be comprised of one public member and a minimum of four registrants, at least one of whom is registered in the same category or branch as the respondent. The committee members shall provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members is required for each committee meeting.
- B. During the preliminary informal investigation of a complaint, registrants named as respondents may appear before an enforcement advisory committee ("EAC") relating to the complaint. Respondents may elect to appear with or without counsel. The committee shall attempt to assess the complaint and discuss the complaint with the respondent and others, if deemed necessary, and prepare a recommendation for disposition of the complaint.
- C. Respondents are not required to participate in the enforcement advisory committee meeting and no inference shall be drawn from a respondent's decision not to attend.
- D. If a respondent chooses not to attend the enforcement advisory committee meeting, the committee may meet and review information presented by staff and others and prepare a recommendation for disposition of the complaint.
- E. The Board shall advise the respondent of the committee recommendation.
- F. After the informal investigation has been completed, if the committee recommendation supports a determination that the complaint is unfounded, the recommendation shall be forwarded to the Board for review and final disposition.
- G. In all cases where the advisory committee finds probable cause to believe that disciplinary action is warranted, the staff will attempt to resolve the complaint informally by obtaining a signed consent agreement from the respondent. The Board

shall review the committee recommendation, staff recommendation, consent agreement, and, in the event a signed consent agreement cannot be obtained, any counterproposal from the respondent.

**Historical Note**

Adopted effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-121. Investigation of Violations**

If any information concerning a possible violation of the Act or any of these rules is received or obtained by the Board or Board staff, an investigation shall be conducted prior to the initiation of formal proceedings. Investigative reports, professional assessments, enforcement advisory committee recommendations, and other documents and materials relating to an investigation shall remain confidential until the matter is closed, until the issuance of a hearing notice under A.R.S. § 32-128, or until the matter is settled by consent order; however, the Board shall inform the respondent that an investigation is being conducted and explain the general nature of the investigation. The respondent shall have access to a copy of the complaint and any assessment or EAC reports drafted during the investigation. The public may obtain information that an investigation is being conducted and an explanation of the general nature of the investigation. The Board may refer investigative information to other public agencies as appropriate under the circumstances.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-122. Issuance of Subpoenas**

Any party desiring the Board to issue a subpoena shall make application, stating the substance of the testimony expected of the witness or the relevancy of the evidence to be produced. If the testimony or evidence appears to the Board to be material and necessary, a subpoena shall be supplied. The affixing of the seal of the Board and the signature of the Chairman, Secretary, Executive Director, shall be sufficient attestation of the same. The party applying for the subpoena shall pay for service of the subpoena. A party is considered served at the time of personal service or mailing of the document by certified mail that is addressed to the person's last known address of record on file with the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

**R4-30-123. Informal Compliance Procedures**

- A. Upon notification of the recommendation of an enforcement advisory committee, a registrant may meet with Board staff.

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

The registrant may appear with or without counsel. The purpose of the meeting is to discuss informal settlement of the investigative matter. Upon completion of the meeting, a Board enforcement officer shall make recommendations to the Board.

- B.** At any time either before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of settlement whereby, in lieu of formal disciplinary action, the registrant agrees to accept certain sanctions such as suspension, civil penalties, enrolling in relevant professional education courses, limiting the scope of practice, submitting work product to professional peer review, or other disciplinary sanctions. If the Board determines that the proposed settlement will adequately protect the public welfare, the Board shall accept the offer and enter a decision consented to by the registrant, incorporating the proposed settlement.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9

A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-124. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Section repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003

(Supp. 03-1).

**R4-30-125. Reserved****R4-30-126. Service of Board Decisions; Rehearing of Board Decisions**

- A.** Except as provided in subsection (G), any party to an appealable agency action or contested case before the Board who is aggrieved by a decision rendered in the matter may file with the Board, not later than 30 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the motion. A decision shall be deemed to have been served on the date when personally delivered or mailed by certified mail to the party's last known address of record with the agency. The filing of a motion for rehearing is a condition precedent to the right of appeal provided in A.R.S. § 32-128(J).
- B.** A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 calendar days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The filing of a motion for rehearing or review suspends the operation of the Board's order and allows the registrant to practice in his or her profession pending denial or granting of the motion, and pending the decision of the Board on the rehearing or review if the motion is granted.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency, members of the Board or the prevailing party, or

any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;

2. Misconduct of the Board or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  7. The decision is unjustified based upon the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E.** Not later than 30 days after a decision is rendered, the Board may on its own motion order a rehearing or review of its decision for any reason listed in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting a rehearing shall specify the grounds for the rehearing.
- F.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** If the Board makes specific findings that the immediate effectiveness of a decision is necessary for preservation of the public welfare, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended

by final rulemaking at 6 A.A.R. 1018, effective February

25, 2000 (Supp. 00-1). Amended by final rulemaking at

10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**ARTICLE 2. REGISTRATION PROVISIONS****R4-30-201. Registration as an Architect, Engineer, Geologist, Landscape Architect, or Land Surveyor**

- A.** An applicant for registration as an architect, engineer, geologist, landscape architect, or land surveyor shall submit a completed application package for professional registration that contains the following:
1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

2. Name, residence address, mailing address if different from residence, and telephone number, of the applicant;
  3. Date of birth and social security number of the applicant;
  4. Citizenship or legal residence of the applicant;
  5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
  6. A detailed explanatory statement and documentation, regarding;
    - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
    - b. Refusal of any professional or occupational registration, certification, or license to the applicant by any state or jurisdiction;
    - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
    - d. Any alias or other name used by the applicant; and
    - e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation.
  7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity);
  8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
  9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
  10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
  11. Name, current address, and telephone number of the applicant's current and former employers (the names of companies within the last ten-year period) in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;
  12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or more years shall provide the names and address of all immediate supervisors during the most recent ten-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three professional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;
  13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
  14. Certificate of Experience Report from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record from additional professional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board, but the Board must receive them directly from the reference;
  15. Evidence of successful completion, or waiver by the Board, of the applicable fundamentals examination. An applicant for registration who has successfully completed a fundamentals examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an engineer, geologist or land surveyor shall pass the applicable fundamentals examination before admission to the professional examination. An applicant seeking professional registration as a geologist may take the fundamentals examination on the same day;
  16. Certification that the information provided to the Board is accurate, true and complete; and
  17. The applicable fee.
- B.** If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above-referenced time.
  - C.** An applicant holding a certificate of qualification issued by one of the national examination councils recognized in R4-30-203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national examination council contain all the information described in A.R.S. § 32-122.01 and subsection (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.
  - D.** The Board staff shall review all applications and, if necessary, refer completed applications to an evaluator deemed qualified by the board and chosen from the pool of enforcement advisory committee members for evaluation. If the application for registration is complete and in the proper form and the Board staff or the evaluator is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in the field for which the application was filed, the Board staff or evaluator shall recommend that the Board certify the applicant as eligible for registration. If for any reason the Board staff or the evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff and evaluator shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.
  - E.** The Board may accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member.
  - F.** The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee.

- G.** An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective November 10, 1998 (Supp. 98-4).

Amended by final rulemaking at 9 A.A.R. 791, effective

February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (05-3). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-202. In-training Designation**

- A.** An applicant for in-training designation shall submit an original completed in-training application package that contains the following:
1. Evidence of successful completion, or waiver by the Board, of the current fundamentals examination in the category and branch, if applicable, for which in-training designation is sought;
  2. The information set forth in subsections (B)(1) through (9); and
  3. The applicable fee.
- B.** An examination applicant who wants to sit for a fundamentals examination shall submit an original completed exam authorization application to the Board, and provide the following:
1. Name, residence address, mailing address if different from residence, and telephone number of the applicant;
  2. Date of birth and social security number of the applicant;
  3. Citizenship or legal residence;
  4. Category, and branch of engineering if applicable, for which the applicant is seeking an in-training designation;
  5. Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, and any alias or other name used by the applicant;
  6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution that the applicant attended;
  7. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;
  8. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
  9. Certification that the information provided to the Board is accurate, true, and complete.
- C.** If otherwise qualified, the Board shall permit an applicant for in-training designation to take the fundamentals examination in the final year of a baccalaureate, masters, or other degree program accepted by the Board and accredited in the category for which the application is made. The applicant shall have the application form endorsed by the applicant's college dean or faculty advisor, or, if already a graduate, may arrange to have a final transcript, indicating the degree awarded, sent directly from the registrar to the Board, in lieu of the endorsement.

- D.** The Board shall permit an applicant for in-training designation without an accredited college degree to take the fundamentals examination after submitting to the Board evidence of four years of satisfactory experience or education or both. The applicant shall provide the name, current address, and telephone number of all current and former employers; names of all supervisors and their titles; dates of employment; applicant's title, and a description of the work performed. The applicant shall provide Certificate of Experience Record and Reference Forms to immediate supervisors at present and past employers. The applicant shall ensure the completed reference forms are submitted to the Board. The applicant shall meet all other requirements of this Section.

**Historical Note**

New Section R4-30-202 renumbered from R4-30-203 and amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-202.01. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-203. Waiver of Examination**

- A.** The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid professional or occupational registration, certification, or license in the category for which registration, certification, or licensure is sought, and is in good standing in another state or U.S. territory provided: The applicant submits verifiable documentation to the Board that the applicant has been actively engaged as a professional or occupational registrant, certificant, or licensee in another state or U.S. territory for at least 10 years in the category for which registration, certification, or licensure is sought. For purposes of this subsection, "actively engaged as a professional registrant" means that the applicant holds a valid professional or occupational registration, certification, or license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.
- B.** The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who submits verifiable documentation to the Board that the applicant holds one of the following professional records, issued by a national examination council, and is registered in good standing in another state or U.S. territory and has been actively engaged in the practice of the profession for which the applicant seeks registration. The Board recognizes the following national examination council records:
1. National Council of Architectural Registration Boards' ("NCARB") Certificate Record, with design and seismic (lateral forces) qualifications;
  2. National Council of Examiners for Engineers and Surveyors Council ("NCEES") Record; or
  3. Council of Landscape Architectural Registration Boards Council ("CLARB") Record and Certification.
- C.** When reviewing an engineering applicant's experience and examination information, the Board shall take into account the

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

specific branch of engineering in which the applicant is seeking proficiency recognition.

- D. The Board shall waive the fundamentals examination if an applicant has successfully completed a fundamentals examination in another state or jurisdiction in the category for which registration is sought, which is equivalent to those examinations required in Arizona. The applicant shall ensure that proof of successful completion is forwarded directly from the authority that administered the original examination.
- E. The Board shall waive the fundamentals examination for an applicant who has a degree listed in R4-30-208(A) or other educational credit approved by the Board in the category, and branch if applicable, for which registration is sought, and meets all other requirements of A.R.S. § 32-126(D).
- F. All applicants who request a waiver of any examination requirement shall meet all other requirements for professional registration or in-training designation in R4-30-201 and R4-30-202. An applicant applying for a waiver under subsection (B) shall ensure that the required documentation is forwarded directly to the Board from the national examination council.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). R4-30-203 renumbered to R4-30-202; new Section R4-30-203 renumbered from R4-30-207 and amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-204. Examinations**

- A. Board Review For Authorization to Test: Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following information for approval:
  1. Name, residence address, mailing address if different from residence, and telephone number;
  2. Date of birth and Social Security number;
  3. Proof of citizenship or legal residence;
  4. Category, and branch of engineering if applicable;
  5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution attended;
  6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution attended;
  7. Evidence of at least 60 months of required education or experience, or both, in the category for which registration is sought.
    - a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
    - b. Dates of employment;
    - c. Applicant's title;
    - d. Description of work performed; and
    - e. Number of hours worked per week;
  8. Names and current addresses of applicant's current and former employers (the names of companies within the last ten year period) in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn

statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;

9. A release authorizing the Board to investigate the applicant's education and experience;
10. Certificate of Experience Report from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional professional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that the Board receives these Reports directly from the reference;
11. Evidence of successful completion, or waiver by the Board, of the applicable fundamentals examination. An applicant who has successfully completed a fundamentals examination in another state or jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an engineer, geologist, or land surveyor shall pass the applicable fundamentals examination before admission to the professional examination. An applicant for registration as a geologist may take the in-training examination on the same date as the professional examination;
12. Certification that the information provided to the Board is accurate, true, and complete; and
13. The applicable fees.
14. In addition to the above requirements, an applicant who does not possess education required for direct access to the NCARB Architect Registration Examination (ARE) shall provide the Board with 60 months of a diversity of experience directly related to the practice of architecture and of a character satisfactory to the Board, in each of the following categories, in order to obtain Board authorization to sit for the required registration examination:
  - a. Practice Management. The experience obtained in this category shall demonstrate abilities to manage architectural practice, including professional ethics, fiduciary responsibilities, and the regulations governing the practice of architecture. The experience obtained shall focus on issues related to pre-contract tasks including negotiation, human resource management, and consultant development. Applicants shall demonstrate an understanding of and abilities in business structure, business development, and asset development and protection.
  - b. Project Management. The experience obtained in this category shall demonstrate abilities to manage architectural projects, including organizing principles, contract management, and consultant management. The experience shall focus on issues related to office standards, development of project teams, and overall project control of client, fee, and risk management. Experience shall demonstrate an understanding of and abilities in quality control, project team configuration, and project scheduling. In addition, the experience shall demonstrate the ability to establish and deliver project services per contractual requirements in collaboration with consultants.
  - c. Programming and Analysis. The experience obtained in this category shall demonstrate abilities

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

related to the evaluation of project requirements, constraints, and opportunities. The experience shall focus on issues related to programming, site analysis, and zoning and code requirements and demonstrate an understanding of and abilities in project type analysis, the establishment of qualitative and quantitative project requirements, evaluation of project site and context, and assessment of economic issues.

- d. **Project Planning and Design.** The experience obtained in this category shall demonstrate abilities to assess objectives related to the preliminary design of sites and buildings. The experience shall focus on issues related to the generation or evaluation of design alternatives that synthesize environmental, cultural, behavioral, technical and economic issues. The experience shall demonstrate an understanding of and abilities in design concepts, sustainability/environmental design, universal design, and other forms of governing codes and regulations.
  - e. **Project Development and Documentation.** The experience obtained in this category shall demonstrate objectives related to the integration and documentation of building systems, material selection, and material assemblies into a project. The experience shall focus on issues related to the development of design concepts, evaluation of materials and technologies, selection of appropriate construction techniques, and appropriate construction documentation. The experience shall demonstrate an understanding of and abilities in integration of civil, structural, mechanical, electrical, plumbing, and specialty systems into overall project design and documentation.
  - f. **Construction and Evaluation.** The experience obtained in this category shall demonstrate objectives related to construction contract administration and post-occupancy evaluation of projects. The experience shall focus on issues related to bidding and negotiation processes, support of the construction process, and evaluation of completed projects. The experience shall demonstrate an understanding of and abilities in construction contract execution, construction support services (including construction observation and shop drawing or submittal review), payment request processing, and project closeout. In addition, candidates shall also demonstrate an understanding and abilities in project evaluation of integrated building systems and their performance.
- B.** The Board staff shall review all applications and, if necessary, refer completed applications to an evaluator who meets qualifications approved by the Board for evaluation. If the application for examination is complete and in the proper form and the Board staff or the evaluator is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or evaluator shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or evaluator is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.
- C. National Council Examinations:**
1. Applicants for architect, landscape architect, engineer, or land surveyor registration who wish to sit for a professional examination, and who have earned an educational degree recognized by the applicable national council, may apply directly to the applicable national council to take that exam.
  2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, the Board may recommend them to the applicable national council for entry into the applicable national examination. Applicants shall meet all national council requirements for successful completion of applicable examinations.
  3. An applicant for professional examination in any category shall take and pass the examination or at least one division of a multi-divisional examination within one year after receiving approval. If an applicant fails to take and pass an examination within one year after receiving approval, the applicant shall submit a new application for professional examination authorization to the Board.
  4. An applicant who has failed any division of a national multi-divisional examination shall be required to meet the applicable national council's requirements for successful completion of the examination.
  5. Examinations administered by a national council of which the Board is a member, or a professional association approved by the Board, shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, reexamination, exam review and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.
  6. The Board shall close an examination authorization file for multi-divisional national examination if the applicant fails to pass all divisions of the applicable examination within five years after first passing any division of the examination unless the Board approves an extension.
- D. Board Administered Examinations:**
1. An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, shall take and pass the examination within one year from making the request to test unless the Board grants an extension. The applicant shall communicate all questions and concerns regarding extensions, special accommodations and refunds to the Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date.
  2. An applicant who fails to achieve a passing grade on any examination administered by the Board may request reexamination by notifying the Board in writing of the applicant's desire to retake the examination and paying the applicable examination fee. An applicant who retakes any examination shall advise the Board of any changes in the information provided under subsection (A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to retake and pass the Board-administered examination within one year from the request for reexamination. An applicant whose file has been closed and who later wishes to apply for examination shall submit a new examination application package to the Board.
  3. An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.

4. An applicant who desires a regrade of a Board administered examination shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will regrade the examination.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-205. Reserved****R4-30-206. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Repealed effective November 10, 1998 (Supp. 98-4).

**R4-30-207. Renumbered****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Section R4-30-207 renumbered to R4-30-203 effective November 10, 1998 (Supp. 98-4).

**R4-30-208. Education and Work Experience****A. Education credit.**

1. The Board shall grant credit according to the following:
  - a. Architectural applicants with National Architectural Accrediting Board accredited degree (NAAB): 60 months
  - b. Architectural applicants with a four-year architectural degree: 48 months
  - c. Landscape Architectural Accrediting Board accredited degree (LAAB): 48 months
  - d. Landscape Architectural Accrediting Board accredited master's or doctorate degree: 60 months
  - e. Engineering applicants with an Accreditation Board of Engineering and Technology (ABET) accredited bachelor's degree and a (ABET) master's or doctorate degree in the branch of engineering that registration is sought: 60 months

- f. Engineering applicants with an ABET accredited bachelor's degree or equivalent in the branch of engineering that registration is sought: 48 months
  - g. Engineering applicants with four-year ABET accredited degrees in a branch other than that in which registration is sought: 36 months
  - h. Land Surveying applicants with ABET accredited bachelor degree in land surveying: 48 months
  - i. Land Surveying applicants with a master's degree in land surveying: 60 months
  - j. Geology applicants with bachelor's degree in geology or earth sciences: 48 months
  - k. Geology applicants with a master's or doctorate degree in geology or earth sciences: 60 months
2. The Board shall grant all other education credit according to the following:
    - a. Credit shall not be granted for course work obtained in the United States or its possessions unless attained at an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education.
    - b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree program identified in subsection (A) of this rule.
    - c. Credit shall not be given for general education courses in excess of the number of hours allowed in the pertinent program identified in subsection (A).
    - d. In determining pro rata credit, 30 semester hours or 45 quarter hours shall equal 12 months' credit.
    - e. An applicant shall be granted both education and work experience for the same period provided the total months' credit granted in a period does not exceed the number of months in that period.
    - f. Foreign education evaluation service acceptable to the Board shall be required of foreign-educated applicants and shall be provided at applicants' cost.

**B. The Board shall credit work experience as follows:**

1. One hundred and thirty hours or more of work per month is equal to one month of work experience.
2. Between 85 hours and 129 hours of work per month is equal to one-half month of work experience.
3. The Board shall not grant credit for less than 85 hours of work experience in a month.
4. Experience shall be verified by the employer before the Board grants the credit.

**Historical Note**

Adopted effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-209. Time-frames for Professional Registration, Certification, or In-training Designation**

- A. Within 60 days of receiving the initial application package for professional registration, certification, or in-training designation, the Board shall finish an administrative completeness review.
  1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
  2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and spec-

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.

3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is Non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
  4. If an applicant requests to sit for the professional, certification, or fundamentals examination, or requests a waiver of examination, the time-frames in R4-30-210 apply until the Board grants or denies the applicant's request.
- B.** The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall approve the applicant for professional registration, certification, or in-training designation.
  2. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received or the deadline for submission passes.
  3. When the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frame totaling no more than 30 days.
  4. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
  5. If the Board finds that the applicant does not meet all requirements in statute and rule, the Board shall deny the applicant professional registration, certification, or in-training designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.
- C.** Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.
- D.** For purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for a candidate applying for professional registration, certification, or in-training designation:
1. Administrative completeness review time-frame: 60 days;

2. Substantive review time-frame: 60 days; and
3. Overall time-frame: 120 days. Days during which time is suspended under subsection (A)(2) are not counted in the computation of the overall time-frame.

**Historical Note**

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-210. Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or Fundamentals Examination**

- A.** Within 60 days of receiving the initial application package to sit for, or for waiver of, the professional, certification, or fundamentals examination, the Board shall finish an administrative completeness review.
1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
  2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
  3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the fundamentals, certification, or professional examination, or who requests a waiver of examination, shall submit a new application package and pay the applicable fee.
- B.** The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall either approve the applicant to sit for the next applicable examination, or the Board shall waive the examination requirement.
  2. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received.
  3. If the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the sub-

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

stantive review time-frames totaling not more than 30 days.

4. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the applicable examination or request a waiver of examination shall submit a new application package and pay the applicable fee.
- C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.
- D. For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for an applicant wishing to sit for the applicable examination or to request a waiver of examination:
  1. Administrative completeness review time-frame: 60 days;
  2. Substantive review time-frame: 60 days; and
  3. Overall time-frame: 120 days.

**Historical Note**

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-211. Repealed****Historical Note**

Adopted effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R4-30-212. Expired****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R4-30-213. Reserved****R4-30-214. Architect Registration**

An applicant for architect registration shall complete all of the following:

1. An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards' (NCARB) professional experience requirement.
2. An applicant shall successfully complete the professional architect examination designated by the Board and provided by the National Council of Architectural Registration Boards.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4).

Correction to subsection (B) (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-215. Reserved****R4-30-216. Reserved****R4-30-217. Reserved****R4-30-218. Reserved****R4-30-219. Reserved****R4-30-220. Reserved****R4-30-221. Engineering Branches Recognized**

A. The Board shall recognize the branches of engineering described below for review of experience, selection of examination, definition of examination areas, and definition of demonstrated proficiency areas to be inscribed on the registrant's seal. The branches do not limit the areas of a registrant's practice of engineering. (See R4-30-301(18))

1. Agriculture: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning agricultural machinery, drainage, irrigation, terracing, farm electricity or water pumps and wells for the maintenance of adequate potable water supplies for crops, people, animals, or industry.
2. Architectural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building mechanical, acoustical, electrical, lighting, or structural systems.
3. Chemical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning chemical enterprises, chemical and biological processes, plant layout, production of pilot plants, water, wastewater and pollution control plants, piping and distribution systems, heat exchanges, energy production management and distribution systems, process instrumentation and control systems, biomedical equipment, mining and minerals beneficiation, corrosion retardation, heat, mass and momentum transfer systems, reaction kinetics, thermodynamics, quality assurance controls, or systems for heat transmission.
4. Civil: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning highways, streets, transportation systems, drainage and flood control structures, surface and subsurface hydrologics, sewers, tunnels, railroads, geotechnical analysis, waterfronts, water and wastewater systems, water power and supply apparatus, wells, pumps, bridges, dams, irrigation structures, water purification apparatus, incinerators, or site fire protection systems.
5. Control Systems: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning control systems and their constituent devices including, but not limited to, dynamic stability and the application of instrumentation

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

- and feedback control principles to regulate and operate chemical plants, petroleum refineries, food processing plants, water and waste treatment plants, power plants, pollution abatement systems, transportation systems, or other dynamic processes and systems.
6. Electrical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning power systems, electronic and transmission equipment, electric service and supply systems, lighting systems, communication service and supply systems, fire alarm and detection systems, control systems, or electrical installations.
  7. Environmental: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water and wastewater systems, domestic and process (industrial/commercial) solid waste and hazardous materials systems, air quality systems, or health, safety, and environmental protection including, but not limited to systems relating to emergency response, risk analysis, radiation protection, noise toxicology, or industrial hygiene.
  8. Fire Protection: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building exiting and life safety systems, fire suppression systems and devices, fire detection and alarm systems and devices, smoke exhaust and smoke management systems, fire resistance for building components and assemblies, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems, and the reduction and control of fire hazards due to processes subject to fire or explosion.
  9. Geological: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning geological studies related to surface and subsurface excavations and foundations, stability of slopes, groundwater locations, geological material age and strength determinations near surface or deep subsurface geological structures or geophysical mapping of geological formations and groundwater locations.
  10. Industrial: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning factory layouts, tools and fixtures, factory planning, time and motion study systems, rate plans, production plans, quality control systems and analysis, work simplification systems, methods studies and cost, production control, organizational, operational and labor needs, or safety analysis.
  11. Mechanical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning air conditioning, refrigeration, ventilation, combustion, heat transfer, energy, power, fuels, propulsion, machinery, tools, manufacturing, fluids, plumbing, fire suppression systems and devices, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems.
  12. Metallurgical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the production of metals or metal objects, testing procedures, metal processing, failure analysis procedures, mining and mineral beneficiation, or the development of metal alloys.
  13. Mining: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the construction of plants, shaft and bottom layouts, ventilation and hoisting systems, head frames, washery or concentration mills, mining methods and testing procedures, or metallurgical works and production procedures.
  14. Nuclear: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning nuclear waste management, alternative waste management systems, disposal criteria and risk evaluation, transportation, packaging, decontamination, handling, welding evaluation, site stabilization, recovery techniques, water and air quality control systems, waste volume management, evaporation systems, reactor safety methods, health safety systems, cycle analysis, or nuclear fuels.
  15. Petroleum: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning drilling equipment, pipelines, refinery plants, gathering systems, handling and storage systems, exploitation and selection methods, gas measurement and core analysis, phase behavior studies, reserve calculations, or the development of petroleum products.
  16. Sanitary: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water treatment and sewage disposal plants, water systems, sewers, incinerators, distribution systems, sewage and industrial waste treatment plants, pollution reduction systems, sanitary facilities, or public health systems.
  17. Structural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning force-resisting and load-bearing members and their connections for structures such as foundations, bridges, walls, columns, slabs, beams, trusses, or similar members used singly or as part of a larger structure.
- B.** An applicant shall submit to the Board a separate application and application fee for each branch for which application is made. An applicant who wishes to change the branch of application after notification by the Board that the application has been evaluated by the Board shall submit the request in writing and pay an additional application fee.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective July 6, 1993 (Supp. 93-3). Amended

effective May 1, 1995 (Supp. 95-2). Amended effective

December 18, 1997 (Supp. 97-4). Amended by final

rulemaking at 6 A.A.R. 1018, effective February 25, 2000

(Supp. 00-1). Amended by final rulemaking at 10 A.A.R.

2798, effective August 7, 2004 (Supp. 04-2). Amended

by final rulemaking at 12 A.A.R. 1606, effective July 1,

2006 (Supp. 06-2).

**R4-30-222. Engineer-In-Training Designation**

**A.** To qualify for admission to the fundamentals examination solely on the basis of education, an applicant shall be a graduate of a four-year engineering degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.

**B.** To qualify for admission to the fundamentals examination, an applicant who is not a graduate of a four-year ABET-accredited engineering degree program shall have at least four years of education or experience or a combination of both directly related to the practice of engineering. Experience directly

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

related to the practice of engineering of a character satisfactory to the Board includes but is not limited to the following in the candidate's branch of engineering:

1. Consultation: The active involvement in meetings, discussions or development of reports intended to provide information, facts or advice regarding the application of the accepted engineering principles to fulfill the client's specific requirements.
  2. Research investigation: The search, examination or study to determine the practicality or effectiveness of accepted principles for adaptation and application to novel situations or the development of new or alternative solutions to solve problems.
  3. Evaluation: The analysis, testing or study to determine or estimate the merit, effect, efficiency or practicality of approaches, methods, designs, structures or materials for use in a given situation or to achieve a specific result.
  4. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a problem.
  5. Design: Design, development and location experience.
  6. Construction review: The review or supervision of construction projects in the candidate's branch of engineering to determine conformance with contract documents and design specifications (maximum 12 months' credit).
  7. Administration: Administrative experience in the candidate's branch of engineering, including office and field administration, field or laboratory testing, quotation requests, change orders, bidding procedures, cost accounting and project closeouts maximum 12 months' credit).
  8. Surveying: The measurement, using accepted methods of surveying, of units of space, water, land or structures to determine boundaries, areas, shapes, slopes, distances, angles or other calculations (maximum 12 months' credit).
  9. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials directly relating to the candidate's branch of engineering (maximum six months' credit).
  10. Other engineering experience: Experience of a nature set forth in this subsection but in other recognized branches of engineering (maximum six months' credit).
  11. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant for Engineer In-Training Designation shall successfully complete the fundamentals examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-223. Reserved**

**R4-30-224. Engineer Registration**

- A. Work experience credited toward the eight-year active engagement requirement shall be directly related to the applicant's branch of engineering and of a character satisfactory to the Board and attained as described in R4-30-222, except that

work experience for specific branches of engineering as described in R4-30-221 shall be for the purpose of qualifying an applicant for registration only and shall not be construed to restrict or confine the work practices of or engineering engagements accepted by a registrant.

- B. An applicant shall successfully complete the professional engineer examinations offered in the applicant's branch of engineering designated by the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-225. Reserved**

**R4-30-226. Reserved**

**R4-30-227. Reserved**

**R4-30-228. Reserved**

**R4-30-229. Reserved**

**R4-30-230. Reserved**

**R4-30-231. Reserved**

**R4-30-232. Reserved**

**R4-30-233. Reserved**

**R4-30-234. Reserved**

**R4-30-235. Reserved**

**R4-30-236. Reserved**

**R4-30-237. Reserved**

**R4-30-238. Reserved**

**R4-30-239. Reserved**

**R4-30-240. Reserved**

**R4-30-241. Reserved**

**R4-30-242. Geologist-in-training Designation**

A. To qualify for admission to the fundamentals examination solely on the basis of education, an applicant shall be a graduate or be in the final year of a four-year degree program with a major in geology or earth science at an accredited college or university.

B. To qualify for admission to the fundamentals examination, an applicant who is not a graduate of a four-year degree program as specified in subsection (A) shall have at least four years of education or experience or both directly related to the practice of geology. Experience directly related to the practice of geology of a character satisfactory to the Board shall include the following:

1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding natural resources and surface and subsurface geological conditions and the preparation of geological maps for use in consultations with clients.
2. Evaluation: The evaluation of mining and petroleum properties, groundwater resources, unconsolidated earth

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

materials, mineral fuels, natural hazards and land use limitations.

3. Supervision of exploration: The supervision of the geological phases of engineering investigation, exploration for mineral and natural resources, metallic and nonmetallic ores, petroleum and groundwater resources.
  4. Administration: Administrative experience, including office and field administration, field or laboratory testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
  5. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on geological subjects (maximum six months' credit).
  6. Engineering: Experience in related branches of engineering (maximum six months' credit).
  7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant for geologist in-training designation shall successfully complete the fundamentals examination designated by the Board and provided by the Association of State Boards of Geology.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-243. Reserved****R4-30-244. Geologist Registration**

An applicant shall successfully complete the professional geologist examination designated by the Board and provided by the Association of State Boards of Geology.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-245. Reserved****R4-30-246. Reserved****R4-30-247. Home Inspector Certification**

- A. An applicant for certification as a home inspector shall submit an original completed application package that contains the following:
1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
  2. The information in subsections (B) and (C);
  3. A completed fingerprint card;
  4. Applicable fees;
  5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the Arizona State Board for Private Postsecondary Education, or accredited by the Distance Education Accrediting Commission, or by an accrediting agency approved by the United States

Department of Education. The course of study shall encompass all of following major content areas:

- a. Structural Components,
  - b. Exterior,
  - c. Roofing,
  - d. Plumbing,
  - e. Heating,
  - f. Cooling,
  - g. Electrical,
  - h. Insulation and Ventilation,
  - i. Interiors,
  - j. Fireplaces and Solid Fuel-Burning Devices,
  - k. Swimming Pools & Spas, and
  - l. Professional Practice;
6. Evidence of completion of 30 parallel inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All timeframes promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.
- B. A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the "Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors," ("Standards") adopted and published by the Board on February 28, 2012. Copies of the Standards are available at the Board's office.
- C. The application package shall contain the following:
1. Name, residence address, mailing address if different from residence address, and telephone number;
  2. Date of birth and Social Security number of the applicant;
  3. Citizenship or legal residence;
  4. A detailed explanatory statement regarding:
    - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
    - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;
    - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
    - d. Any alias or other name used by the applicant;
    - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
  5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies; evidence of having a valid fingerprint clearance card issued pursuant to Title 41, Chapter 12, Article 3.1;
  6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

was granted (that is, by examination, education, experience, or reciprocity), 4 A.A.C. 30, Supp. 18-2, released June 30, 2018, page 18;

7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
  8. A release authorizing the Board to investigate the applicant's education, experience, and moral character and repute;
  9. Certification that the information provided to the Board is accurate, true, and complete;
  10. Copy of one home inspection report that meets the standards in R4-30-301.01 and reports on at least one immediate major repair as defined in the standards, along with the Report Checklist Supplement; and
  11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee or a certified home inspector evaluator for evaluation. If the application is complete and in the proper form, the Board staff, committee, or evaluator is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff, committee, or evaluator shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.
- E.** A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.
- F.** A home inspector who places a home inspector certificate on inactive status shall retain the proof of financial assurance for at least two years after the date that the certificate becomes inactive. A home inspector who fails to retain financial assurance for the required two years is subject to suspension and revocation of the home inspection certificate as per subsection (E). In order to reactivate an inactive home inspection certificate, a home inspector shall provide proof of financial assurance to the Board with the application for reactivation. An inactive home inspector certification shall not qualify for reactivation until proof of financial assurance has been submitted to the Board.
- G.** In order to reactivate an inactive home inspector certificate, a home inspector who has not practiced as a certified home inspector during that time in another state requiring registration for the previous five years shall take and pass the National Home Inspector Examination.

**Historical Note**

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for

an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 713 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 93, effective March 9, 2021 (Supp. 20-1).

**R4-30-248. Reserved****R4-30-249. Reserved****R4-30-250. Reserved****R4-30-251. Reserved****R4-30-252. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-253. Reserved****R4-30-254. Landscape Architect Registration**

- A.** To qualify for landscape architect registration, an applicant shall provide proof to the Board of the successful completion of 96 months of landscape architecture education or experience or both. To satisfy the education requirement, an applicant must be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.
- B.** To satisfy the experience requirement, an applicant who is a graduate of a five-year landscape architectural degree program shall demonstrate successful completion of at least three years of experience directly related to the practice of landscape architecture. An applicant who is a graduate of a four-year landscape architectural degree program shall demonstrate successful completion of at least four years of experience directly related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture shall demonstrate an applicant's dedication to the protection of the public's health, safety and welfare and shall include the following:
1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.
  2. Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to landscape architectural problems.
  3. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

4. Design: The preparation and use of sketches, plans, drawings, specifications, contracts, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.
  5. Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards, including storm water quality.
  6. Administration: Administrative experience, including office and field administration, field testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
  7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the professional landscape architect examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-255. Reserved**  
**R4-30-256. Reserved**  
**R4-30-257. Reserved**  
**R4-30-258. Reserved**  
**R4-30-259. Reserved**  
**R4-30-260. Reserved**  
**R4-30-261. Reserved**  
**R4-30-262. Repealed**

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-263. Reserved**  
**R4-30-264. Repealed**

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R.

1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-265. Reserved**  
**R4-30-266. Reserved**  
**R4-30-267. Reserved**  
**R4-30-268. Reserved**  
**R4-30-269. Reserved**  
**R4-30-270. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-271. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-272. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

- R4-30-273. Reserved**  
**R4-30-274. Reserved**  
**R4-30-275. Reserved**  
**R4-30-276. Reserved**  
**R4-30-277. Reserved**  
**R4-30-278. Reserved**  
**R4-30-279. Reserved**  
**R4-30-280. Reserved**  
**R4-30-281. Reserved**

**R4-30-282. Land Surveyor-in-training Designation**

- A.** To qualify for admission to the fundamentals examination solely on the basis of education, an applicant shall be a graduate of a four-year land surveying degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B.** To qualify for admission to the fundamentals examination, an applicant who is not a graduate of a four-year ABET-accred-

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ited land surveying degree program shall have at least four years of education or experience or both directly related to the practice of land surveying. Experience directly related to the practice of land surveying of a character satisfactory to the Board shall include the following:

1. The measurement of space, water, land or structures located or to be located upon or within them, to determine boundaries, areas or other necessary calculations through the use of any mechanical, physical, electric or electronic equipment or devices commonly used by registered professional land surveyors.
  2. The analysis of measurement data through the use of professional knowledge or education or practical experience in the mathematical and physical sciences and in the principles of land surveying.
  3. The location or relocation, establishment or re-establishment of boundaries, easements, rights-of-way, bench marks or corners.
  4. Consultation with clients to determine the necessity of land surveying services and the determination of the correct type of services necessary to fulfill the client's needs and objectives.
  5. The search of any source of public or private records for the purpose of performing a survey or to determine and, if necessary, to reconcile differences between the surveyor's collected data and such records.
  6. The platting or subdividing of land or the planning and design of parcels of land for development purposes.
  7. The preparation and maintenance of survey records.
  8. Other land surveying activities, analyses or investigations defined in the Act.
  9. The participation in office and field administration, quotation requests, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
  10. Construction staking (maximum 12 months' credit).
  11. Subprofessional experience as defined in R4-30-101 (maximum six months' credit).
- C. The applicant for land surveyor in-training designation shall apply to the Board and provide proof of successful completion of the fundamentals of surveying examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-283. Reserved****R4-30-284. Land Surveyor Registration**

The candidate shall first successfully complete the fundamentals of surveying examination. Second, the candidate shall successfully complete the professional land surveyor examination provided by the National Council of Examiners for Engineers and Surveyors. Third, the candidate shall successfully complete the Arizona State Specific Examination provided by the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at

24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**ARTICLE 3. REGULATORY PROVISIONS****R4-30-301. Rules of Professional Conduct**

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. If a registrant violates any state or federal criminal statute, the Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
  - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
  - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.

13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at [www.azpls.org](http://www.azpls.org). The Board of Technical Registration adopted the standards on June 15, 2001, and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
  - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
  - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1609, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2). The

website address to the Arizona Professional Land Surveyors (APLS) referenced in subsection (13) has been corrected at the request of the Board (Supp. 21-3).

**R4-30-301.01. Home Inspector Rules of Professional Conduct**

- A. To the extent applicable, a certified home inspector shall conduct a home inspection in accordance with the "Standards of Professional Practice" adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on January 1, 2002, the provisions of which are incorporated by reference and on file with the Office of the Secretary of State. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.
- B. A Certified Home Inspector shall not:
  1. Pay, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee to a real estate company, real estate office, real estate broker/salesperson(s), real estate employees or real estate independent contractors in order to obtain referrals for home inspection business. This prohibition includes, but is not limited to, participation in pay-to-play programs by any name (e.g. "preferred vendor," "approved vendor," "marketing partner," "marketing services agreement");
  2. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee related to the correction of defects found within the scope of the home inspection;
  3. Perform, or offer to perform, for an additional fee, or have any financial interest in the performance of any repairs to the property that has been inspected by that inspector or the inspector's firm for a period of 24 months following the inspection; or
  4. Be accompanied by more than four home inspector candidates while conducting any parallel home inspection.

**Historical Note**

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-302. Electrical Plans**

- A. A registrant shall prepare and submit drawings and specifications for a new electrical system or an addition or modification to an existing electrical system provided the service and associated electrical feeders exceeds 600 amperes 120/240 volts, single phase or 225 amperes 120/208 volts, three phase and the fault current exceeds 10,000 amperes.
- B. In all cases a registrant shall design:
  1. Electrical installations in hospitals or other buildings with surgical operating rooms regulated by Article 517 of the National Electrical code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
  2. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
  3. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

edition) with the exception of gasoline dispensing or repair garages.

4. A registrant shall design an alarm or signaling system that is required for life safety or code compliance.

**Historical Note**

Adopted effective December 18, 1991 (Supp. 91-4).  
Heading amended by final rulemaking at 9 A.A.R. 791,  
effective February 12, 2003 (Supp. 03-1).

**R4-30-303. Securing Seals**

- A. Each registrant required to use a seal shall secure and use an ink seal 1 1/2 inches in diameter and identical in style, size, and appearance to the sample shown in Appendix A. The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant:
  1. "Registered Architect"; "Registered Professional Engineer" together with the branch of engineering in which registered; "Registered Professional Geologist"; "Registered Professional Landscape Architect"; or "Registered Land Surveyor."
  2. The inscription "Arizona U.S.A." shall appear at the bottom of the annular space between the second and third circles; the inner circle shall contain the name of the registrant, registration number, and the words "date signed."
- B. The registrant may order the seal through any vendor and shall pay the cost of its manufacture. Immediately upon receipt of the seal and before using the seal for any purpose, the registrant shall file with the Board, for its records, on a form provided by the Board, an imprint of the seal with an original signature superimposed over it and an affidavit regarding the use of the seal. The Board, within 10 working days of receipt of the form from the registrant, shall disapprove any seal that does not meet the exact specifications of subsection (A) and require that the registrant obtain and pay for another seal that meets those specifications before sealing any work. Engineers registered in more than one branch shall secure and use a seal for each branch of engineering in which registration has been granted.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended  
by final rulemaking at 10 A.A.R. 2798, effective August  
7, 2004 (Supp. 04-2). Amended by final rulemaking at 24  
A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-304. Use of Seals**

- A. A registrant shall place a permanently legible imprint of the registrant's seal and signature on the following:
  1. Each sheet of drawings or maps;
  2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
  3. Either the cover, title, index, or table of contents page, first sheet of each set of project specifications;
  4. Either the cover, index page, or first sheet of each addenda or change order to plans, contract documents or specifications;
  5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
  6. Either the cover, title, index, or table of contents page, or first sheet of any report, specification, or other professional document prepared by a registrant or the registrant's bona fide employee;

7. The signature line of any letter or other professional document prepared by a registrant, or the registrant's bona fide employee; and
8. Shop drawings that require professional services or work as described in the Act. Examples of shop drawings that do not require a seal include drawings that show only:
  - a. Sizing and dimensioning information for fabrication purposes;
  - b. Construction techniques or sequences;
  - c. Components with previous approvals or designed by the registrant of record; or
  - d. Modifications to existing installations that do not affect the original design parameters and do not require additional computations.
9. Public Works projects which require the signature of each professional involved in the project.
- B. A registrant shall apply a label that describes the name of the project and an original imprint of the registrant's seal and signature on all video cassettes that contain copies of professional documents.
- C. In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document: "Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."
- D. A registrant shall sign, date, and seal a professional document:
  1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and
  2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.
- E. For purposes of subsection (A), all original documents shall include:
  1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
  2. An original signature that does not obscure either the registrant's printed name or registration number; and
  3. The date the document was sealed.
- F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.
- G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended  
by final rulemaking at 6 A.A.R. 1018, effective February  
25, 2000 (Supp. 00-1). Amended by final rulemaking at 9  
A.A.R. 791, effective February 12, 2003 (Supp. 03-1).  
Amended by final rulemaking at 10 A.A.R. 2798, effective  
August 7, 2004 (Supp. 04-2). Amended by final  
rulemaking at 13 A.A.R. 1084, effective May 5, 2007  
(Supp. 07-1). Amended by final rulemaking at 14 A.A.R.  
282, effective March 8, 2008 (Supp. 08-1). Amended by

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-305. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

**R4-30-306. Securing and Using Identifying Markers**

- A. Registered land surveyors shall obtain at their expense identifying markers such as tags, caps, or embossed nails which

shall show the registrant's Arizona Registration Number as issued by the Board, and each registration number shall be prefixed by the letters L.S.

- B. Registered land surveyors shall securely attach an identifying marker to every permanent survey point set when making land boundary surveys.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).

**R4-30-307. Repealed****Historical Note**

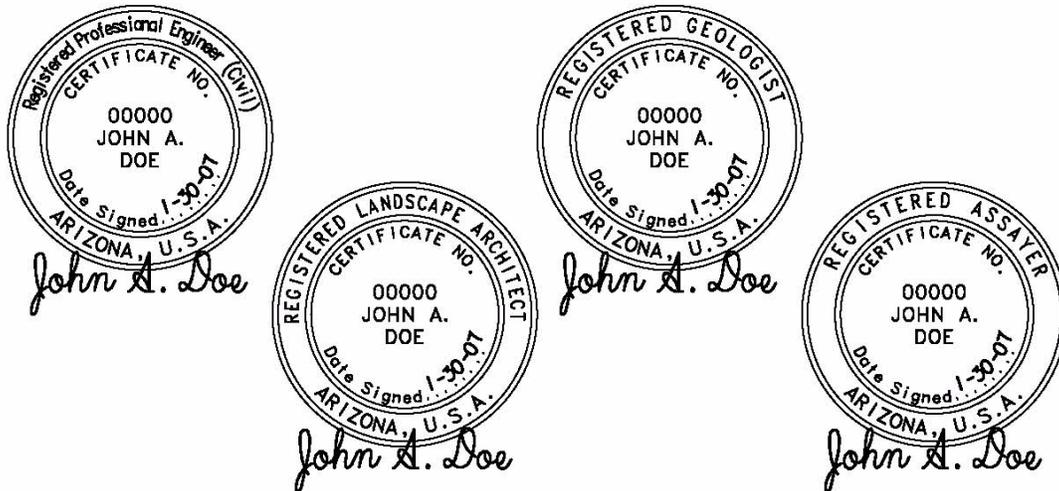
Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

Appendix A. Sample Seals

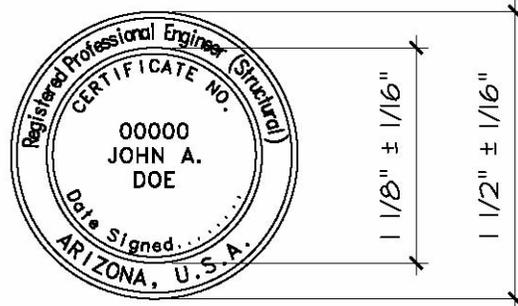
Samples:

Sign your name across lower portion of the seal. Do not cover your name or registration number with your signature.



\*\* ENGINEERS MUST LIST BRANCH – Agriculture, Architectural, Chemical, Civil, Control Systems, Electrical, Environmental, Fire Protection, Geological, Industrial, Mechanical, Mining, Metallurgical, Nuclear, Petroleum, Sanitary, or Structural. The original seal must be the following size:

Outer circle shall be 1 1/2" ± 1/16"  
Inner circle shall be 1 1/8" ± 1/16"



Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1785, effective August 5, 2018 (Supp. 18-2).

## CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

**Appendix B. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791,  
effective February 12, 2003 (Supp. 03-1). New Appendix  
made by final rulemaking at 14 A.A.R. 282, effective  
March 8, 2008 (Supp. 08-1). Repealed by final rulemak-  
ing at 24 A.A.R. 1785, effective August 5, 2018 (Supp.  
18-2).

**Appendix C. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Appen-  
dix repealed by final rulemaking at 9 A.A.R. 791, effec-  
tive February 12, 2003 (Supp. 03-1).

**Appendix D. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791,  
effective February 12, 2003 (Supp. 03-1).

**Appendix E. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791,  
effective February 12, 2003 (Supp. 03-1).

**Appendix F. Repealed****Historical Note**

Adopted effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791,  
effective February 12, 2003 (Supp. 03-1).

### 32-106. Powers and duties

A. The board shall:

1. Adopt rules for the conduct of its meetings and performance of duties imposed on it by law.
2. Adopt an official seal for attestation of certificates of registration and other official papers and documents.
3. Consider and act on or delegate the authority to act on applications for registration or certification.
4. Conduct examinations for in-training and professional registration, except for an alarm business, a controlling person or an alarm agent.
5. Hear and act on complaints or charges or direct an administrative law judge to hear and act on complaints and charges.
6. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction. In exercising these powers, the board may issue subpoenas for the attendance of witnesses and the production of books, records, documents and other evidence it deems relevant to an investigation or hearing.
7. Keep a record of its proceedings.
8. Keep a register that shows the date of each application for registration or certification, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration, if applicable, and the disposition of the application.
9. Do other things necessary to carry out the purposes of this chapter.

B. The board shall specify the proficiency designation in the branch of engineering in which the applicant has designated proficiency on the certificate of registration and renewal card issued to each registered engineer and shall authorize the engineer to use the title of registered professional engineer. The board shall decide what branches of engineering it shall recognize.

C. The board may hold membership in and be represented at national councils or organizations of proficiencies registered under this chapter and may pay the appropriate membership fees. The board may conduct standard examinations on behalf of national councils and may establish fees for those examinations.

D. The board may employ and pay on a fee basis persons, including full-time employees of a state institution, bureau or department, to prepare and grade examinations given to applicants for registration or review an applicant's submissions of required documents for home inspector certification and regulation and may fix the fee to be paid for these services. These employees are authorized to prepare, grade and monitor examinations, review an applicant's submissions of required documents for home inspector certification and regulation and perform other services the board authorizes, and to receive payment for these services from the technical registration fund. The board may contract with an organization to administer the registration examination, including selecting the test site, scheduling the examination, billing and collecting the fee directly from the applicant and grading the examination if a national council of which the board is a member or a professional association approved by the board does not provide these services. If a national council of which the board is a member or a professional association approved by the board does provide these services, the board shall enter into an agreement with the national council or professional association to administer the registration examination.

E. The board may rent necessary office space and pay the cost of this office space from the technical registration fund.

F. The board may adopt rules establishing rules of professional conduct for registrants.

G. The board may require evidence it deems necessary to establish the continuing competency of registrants as a

condition of renewal of licenses.

H. Subject to title 41, chapter 4, article 4, the board may employ persons as it deems necessary.

I. The board shall issue or may authorize the executive director to issue a certificate or renewal certificate to each alarm business and each controlling person and a certification or renewal certification card to each alarm agent if the qualifications prescribed by this chapter are met.

32-111. Home inspector rules and standards committee

A. The home inspector rules and standards committee of the state board of technical registration is established and consists of:

1. Three home inspectors, one of whom is a resident of a county with a population of four hundred thousand persons or less, appointed by the board from a list of names any home inspector organization provides if the home inspector organization meets all of the following criteria:

- (a) Has at least forty members who are actively engaged in the practice of home inspection in this state.
- (b) Holds regular elections.
- (c) Publishes bylaws.
- (d) Maintains a code of ethics.

2. Two members of the board of technical registration, including:

- (a) An architect member or an engineer member of the board who is appointed by the chairman.
- (b) The public member.

B. The board may make appointments of home inspectors to the committee from the lists provided pursuant to subsection A, paragraph 1 of this section or from others having the necessary qualifications.

C. The board-appointed members serve staggered three-year terms. These members shall be home inspectors, shall each have at least five years of experience as a home inspector and shall have passed the examination prescribed in section 32-122.02. The board by a majority vote may remove any member for misconduct, incapacity or neglect of duty and may appoint a new member to complete a term.

D. The committee is responsible for drafting and recommending to the board:

- 1. Criteria for home inspector certification.
- 2. Standards for home inspection reports.
- 3. Standards for written examinations.
- 4. Standards for educational programs, including course of study, programs and continuing education.
- 5. Rules defining conduct.
- 6. Recommendations for types of financial assurances as required in section 32-122.02.
- 7. Other rules and standards related to the practice of home inspectors.

E. The committee may participate in the investigation and review of home inspector complaints as provided by the board.

F. Members of the home inspector rules and standards committee are eligible to receive compensation pursuant to title 38, chapter 4, article 1.

### 32-121. Certificate or registration required for practice

Except as otherwise provided in this section, a person or firm desiring to practice any board-regulated profession or occupation shall first secure a certificate or registration and shall comply with all the conditions prescribed in this chapter. An alarm business or an alarm agent may install alarms if all of the following apply:

1. The alarm business has submitted an application for certification pursuant to section 32-122.05 or is a licensed contractor pursuant to chapter 10 of this title.
2. Each controlling person has submitted an application and proof of a valid fingerprint clearance card to the board pursuant to section 32-122.05.
3. The alarm agent has submitted an application and applied for a fingerprint clearance card pursuant to section 32-122.06.

### 32-101. Purpose; definitions

A. The purpose of this chapter is to provide for the safety, health and welfare of the public through the promulgation and enforcement of standards of qualification for those individuals who are registered or certified and seeking registration or certification pursuant to this chapter.

B. In this chapter, unless the context otherwise requires:

1. "Advertising" includes business cards, signs or letterhead provided by a person to the public.

2. "Alarm" or "alarm system":

(a) Means any mechanical or electrical device that is designed to emit an audible alarm or transmit a signal or message if activated and that is used to detect an unauthorized entry into a building or other facility or alert other persons of the occurrence of a medical emergency or the commission of an unlawful act against a person or in a building or other facility.

(b) Includes:

(i) A silent, panic, holdup, robbery, duress, burglary, medical alert or proprietor alarm that requires emergency personnel to respond.

(ii) A low-voltage electric fence.

(c) Does not include a telephone call diverter or a system that is designed to report environmental and other occurrences and that is not designed or used to alert or cause other persons to alert public safety personnel.

3. "Alarm agent":

(a) Means a person, whether an employee, an independent contractor or otherwise, who acts on behalf of an alarm business and who tests, maintains, services, repairs, sells, rents, leases or installs alarm systems.

(b) Does not include any action by a person that:

(i) Is performed in connection with an alarm system located on the person's own property or the property of the person's employer.

(ii) Is acting on behalf of an alarm business whose work duties do not include visiting the location where an alarm system installation occurs.

4. "Alarm business":

(a) Means any person who, either alone or through a third party, engages in the business of either of the following:

(i) Providing alarm monitoring services.

(ii) Selling, leasing, renting, maintaining, repairing or installing a nonproprietor alarm system or service.

(b) Does not include any of the following:

(i) A person or company that purchases, rents or uses an alarm that is affixed to a motor vehicle.

(ii) A person who owns or conducts a business of selling, leasing, renting, installing, maintaining or monitoring an alarm that is affixed to a motor vehicle.

(iii) A person who installs a nonmonitored proprietor alarm for a business that the person owns, is employed by or

manages.

(iv) The installation or monitoring of fire alarm systems.

(v) An alarm system that is operated by a city or town.

5. "Alarm subscriber" means any person who:

(a) Leases, rents or purchases any monitored alarm system or service from an alarm business.

(b) Leases or rents an alarm system.

(c) Contracts with an alarm business for alarm monitoring, installation, repair or maintenance services.

6. "Architect" means a person who, by reason of knowledge of the mathematical and physical sciences and the principles of architecture and architectural engineering acquired by professional education and practical experience, is qualified to engage in the practice of architecture and is registered as an architect pursuant to this chapter.

7. "Architectural practice" means any professional service or creative work requiring architectural education, training and experience, and the application of the mathematical and physical sciences and the principles of architecture and architectural engineering to such professional services or creative work as consultation, evaluation, design and review of construction for conformance with contract documents and design, in connection with any building, planning or site development. A person is deemed to practice or offer to practice architecture who in any manner represents that the person is an architect or is able to perform any architectural service or other services recognized by educational authorities as architecture.

8. "Board" means the state board of technical registration.

9. "Controlling person":

(a) Means a person who is designated by an alarm business.

(b) Does not include an alarm agent.

10. "Engineer" means a person who by reason of engineering education, training and experience may apply engineering principles and interpret engineering data.

11. "Engineering practice" means any professional service or creative work requiring engineering education, training and experience in applying engineering principles and interpreting engineering data to engineering activities that clearly impact the health, safety and welfare of the public and the engineering design of buildings, structures, products, machines, processes and systems to the extent that the engineering education, training and experience requirements prescribed by sections 32-122 and 32-122.01 are necessary to protect the health, safety and welfare of the public. The services or creative work may include providing planning services, studies, designs, design coordination, drawings, specifications and other technical submissions, surveying as prescribed in paragraph 22, subdivisions (d) and (e) of this subsection, and reviewing construction or other design products for the purposes of monitoring compliance with drawings and specifications related to engineered works. A person employed on a full-time basis as an engineer by an employer engaged in the business of developing, mining and treating ores and other minerals shall not be deemed to be practicing engineering for the purposes of this chapter if the person engages in the practice of engineering exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any engineering services for persons other than the person's employer. A person is deemed to practice engineering if the person does any of the following:

(a) Practices any discipline of the profession of engineering or holds out to the public that the person is able and authorized to practice any discipline of engineering.

(b) Represents to the public that the person is a professional engineer by a verbal claim, sign, advertisement, letterhead or card or in any other manner.

(c) Uses a title that implies that the person is a professional engineer.

12. "Engineer-in-training" means a candidate for registration as a professional engineer who both:

(a) Is a graduate in an approved engineering curriculum of four years or more of a school approved by the board or has four years or more of education or experience, or both, in engineering work that meets standards specified by the board in its rules.

(b) Has passed the engineer-in-training examination.

13. "Firm" means any individual or partnership, corporation or other type of association, including the association of a nonregistrant and a registrant who offers to the public professional services regulated by the board.

14. "Geological practice" means any professional service or work requiring geological education, training and experience, and the application of special knowledge of the earth sciences to such professional services as consultation, evaluation of mining properties, petroleum properties and groundwater resources, professional supervision of exploration for mineral natural resources including metallic and nonmetallic ores, petroleum and groundwater, and the geological phases of engineering investigations.

15. "Geologist" means a person, who is not required to be a professional engineer, who by reason of special knowledge of the earth sciences and the principles and methods of search for and appraisal of mineral or other natural resources acquired by professional education and practical experience is qualified to practice geology as attested by registration as a professional geologist. A person who is employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining or treating ores and other minerals is not deemed to be engaged in geological practice for the purposes of this chapter if the person engages in geological practice exclusively for and as an employee of such employer and does not represent that the person is available and is not represented as being available to perform any geological services for persons other than the person's employer.

16. "Geologist-in-training" means a candidate for registration as a professional geologist who both:

(a) Is a graduate of a school approved by the board or has four years or more of education or experience, or both, in geological work that meets standards specified by the board in its rules.

(b) Has passed the geologist-in-training examination.

17. "Home inspection" means a visual analysis for the purposes of providing a professional opinion of the building, any reasonably accessible installed components and the operation of the building's systems, including the controls normally operated by the owner, for the following components of a residential building of four units or less:

(a) Heating system.

(b) Cooling system.

(c) Plumbing system.

(d) Electrical system.

(e) Structural components.

(f) Foundation.

(g) Roof covering.

(h) Exterior and interior components.

(i) Site aspects as they affect the building.

(j) Pursuant to rules adopted by the board, swimming pool and spa.

18. "Home inspection report" means a written report that is prepared for compensation, that is issued after a home inspection and that clearly describes and identifies the inspected systems, structures and components of a completed dwelling and any visible major defects found to be in need of immediate major repair and any recommendations for additional evaluation by appropriate persons.

19. "Home inspector" means an individual who is certified pursuant to this chapter as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

20. "Landscape architect" means a person who, by reason of professional education or practical experience, or both, is qualified to engage in the practice of landscape architecture as attested by registration as a landscape architect.

21. "Landscape architectural practice":

(a) Means performing professional services such as consultations, investigation, reconnaissance, research, planning, design or responsible supervision in connection with the development of land and incidental water areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings of and approaches to buildings, structures, facilities or other improvements, natural drainage and the consideration and the determination of inherent problems of the land relating to erosion, wear and tear, light or other hazards.

(b) Includes locating and arranging such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph.

(c) Does not include making cadastral surveys or final land plats for official recording or approval, nor mandatorily include planning for governmental subdivisions.

22. "Land surveying practice" means performing one or more of the following professional services:

(a) Measuring land to determine the position of any monument or reference point that marks a property line, boundary or corner for the purpose of determining the area or description of the land.

(b) Locating, relocating, establishing, reestablishing, setting, resetting or replacing of corner monuments or reference points that identify land boundaries, rights-of-way or easements.

(c) Platting or plotting of lands for the purpose of subdividing.

(d) Measuring by angles, distances and elevations natural or artificial features in the air, on the surface and immediate subsurface of the earth, within underground workings and on the surface or within bodies of water for the purpose of determining or establishing their location, size, shape, topography, grades, contours or water surface and depths, and the preparing and perpetuating field note records and maps depicting these features.

(e) Setting, resetting or replacing points to guide the location of new construction.

23. "Land surveyor" means a person who by reason of knowledge of the mathematical and physical sciences, principles of land surveying and evidence gathering acquired by professional education or practical experience, or both, is qualified to practice land surveying as attested by registration as a land surveyor. A person employed on a full-time basis as a land surveyor by an employer engaged in the business of developing, mining or treating ores or other minerals is not deemed to be engaged in land surveying practice for purposes of this chapter if the person engages in land surveying practice exclusively for and as an employee of such employer and does not represent that the person is

available and is not represented as being available to perform any land surveying services for persons other than the person's employer.

24. "Land surveyor-in-training" means a candidate for registration as a professional land surveyor who both:

(a) Is a graduate of a school and curriculum approved by the board or has four years or more of education or experience, or both, in land surveying work that meets standards specified by the board in its rules.

(b) Has passed the land surveyor-in-training examination.

25. "Low-voltage electric fence" means a fence that meets all of the following requirements:

(a) Has an electric fence energizer that is powered by a commercial storage battery with a rated voltage of not more than twelve volts and that produces an electric charge on contact with the fence.

(b) Is completely enclosed by a nonelectric fence or wall.

(c) Is continuously monitored.

(d) Is attached to ancillary components or equipment such as closed circuit television systems, access controls, battery recharging devices and video cameras.

(e) Does not exceed ten feet in height or two feet higher than the nonelectric fence or wall described in subdivision (b) of this paragraph, whichever is higher.

(f) Has identification warning signs attached at intervals of not more than sixty feet.

(g) Is not installed in an area zoned exclusively for single family or multifamily residential use.

(h) Does not enclose property that is used for residential purposes.

26. "Monitored alarm" means a device that is designed to detect an entry on any premises and that if activated generates a notification signal.

27. "Person" means any individual, firm, partnership, corporation, association or other organization.

28. "Principal" means an individual who is an officer of the corporation or is designated by a firm as having full authority and responsible charge of the services offered by the firm.

29. "Professional engineer" means a person who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering and is registered as a professional engineer pursuant to this chapter.

30. "Proprietor alarm" means any alarm or alarm system that is owned by an alarm subscriber who has not contracted with an alarm business.

31. "Registrant" means a person who is registered or certified by the board.

32. "Registration" means a registration or certification that is issued by the board.

32-122.02. Certification of home inspectors; insurance

A. An applicant for certification as a home inspector shall:

1. Be at least eighteen years of age.
2. Have passed within two years preceding application a written examination that is approved by the board and that meets the competency standards recommended by the home inspector rules and standards committee and adopted by the board.
3. Have passed a course of study that meets the standards recommended by the home inspector rules and standards committee and approved by the board.
4. Pay a fee as determined by the board and for initial certification shall provide to the board evidence of having a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
5. Not have had a certificate denied or revoked pursuant to this chapter within one year immediately preceding the application.
6. Have received an absolute discharge from sentence at least five years before the application if the person has been convicted of one or more felonies.
7. Provide evidence of the applicant's ability to obtain financial assurance as provided by subsection B of this section.

B. Within sixty days after certification and before any fee-based home inspection is performed, a home inspector certified pursuant to this chapter shall file one of the following financial assurances pursuant to rules recommended by the home inspector rules and standards committee and adopted by the board:

1. Errors and omissions insurance for negligent acts committed in the course of a home inspection in an amount of \$200,000 in the aggregate and \$100,000 per occurrence.
2. A bond that is retroactive to the certification date in the amount of \$25,000 or proof that minimum net assets have a value of at least \$25,000.

C. If a home inspector loses or otherwise fails to maintain a required financial assurance, the certification shall be automatically suspended and shall be reinstated if a financial assurance is obtained within ninety days. If a financial assurance is not obtained within ninety days, the certification shall be automatically revoked.

D. A home inspector is subject to this chapter and rules adopted pursuant to this chapter.

E. Except as provided in subsection A, paragraph 4 of this section, the board may not require the submission of a fingerprint clearance card for certification renewal or any other purpose.

**C-2.**

**DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**

Title 20, Chapter 6, Article 14

**Amend:** R20-6-1407, R20-6-1408, R20-6-1409, Appendix A, Appendix B, Appendix C,  
Appendix D, Appendix E, Appendix F, Appendix G



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 14, 2024

**SUBJECT:** DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
Title 20, Chapter 6

**Amend:** R20-6-1407, R20-6-1408, R20-6-1409, Appendix A, Appendix B, Appendix C,  
Appendix D, Appendix E, Appendix F, Appendix G

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### **Summary:**

This regular rulemaking from the Department of Insurance and Financial Institutions seeks to amend three (3) rules and seven (7) appendices in Title 20, Chapter 6, Article 14 related to Insurance Holding Company. This rulemaking is required by recent statutory changes to the Arizona Holding Company Act (A.R.S. §§ 20-481 through 20-481.33) (Laws 2023, Ch. 25) and is required to retain the Department's accreditation with the National Association of Insurance Commissioners (NAIC).

This rulemaking does not establish or increase a fee and does not relate to a prior five-year review report.

**1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

The Department states the rules do not contain a new fee or fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department states no study was reviewed or relied upon during the course of this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Department states that the rulemaking is not designed to address any misconduct. Instead, the Department indicates it is necessary to implement statutory changes recently made to the Arizona Holding Company Act (A.R.S. §§ 20-481.33) (Laws 2023, Ch. 25). The Department does not anticipate any additional costs to be incurred by licensees. Stakeholders include the Department and Insurance Holding Company systems as defined in A.R.S. § 20-418(7).

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

6. **What are the economic impacts on stakeholders?**

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. In addition, no political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking. The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to insurers subject to the rules. The Department states that private persons and consumers are not directly affected by the proposed rulemaking.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

ARS §41-1057(D)(7) states the Council shall not approve the rule unless “[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.”

ARS § 41-1025(B) continues with “In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.

2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.”

The Department has made one change in response to a comment filed by the American Property Casualty Insurance Association (“APCIA”). The APCIA made the following request to change the first sentence in subsection R20-6-1408(B):

“B. The lead state Commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state Commissioner makes a determination based upon ~~that~~ the filing that the insurance holding company system meets all of the following criteria:”

The Department and Counsel staff do not consider this a substantial change.

**8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department adequately addressed the one (1) comment received as indicated in subsection seven (7) above.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that this questions does not apply as a general permit is not applicable to insurance holding companies

**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states there is no corresponding federal law to these rules.

**11. Conclusion**

This regular rulemaking from the Department of Insurance and Financial Institutions seeks to amend three rules and seven appendices in Title 20, Chapter 6, Article 14 related to Insurance Holding Company. As stated above, this rulemaking does not establish or increase a fee and does not relate to a prior five-year review report. The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.



**Arizona Department of Insurance and Financial Institutions**  
**100 N 15<sup>th</sup> Avenue, Suite 261, Phoenix, Arizona 85007**  
**(602) 364-3100 | [difi.az.gov](http://difi.az.gov)**

**Katie M. Hobbs, Governor**  
**Barbara D. Richardson,**  
**Cabinet Executive Officer**  
**Executive Deputy Director**

DATE: January 16, 2024

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsinsin, Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions  
Insurance Division  
A.A.C. Title 20, Chapter 6, Article 14 – Insurance Holding Company; Sections R20-6-1407,  
R20-6-1408, R20-6-1409, and Appendices A through G

Dear Chairperson Sornsinsin:

Please find enclosed the Final Rulemaking for A.A.C. Title 20, Chapter 6, Article 14, Sections R20-6-1407 (Transactions Subject to Prior Notice – Notice Filing), R20-6-1408 (Enterprise Risk Report), R20-6-1409 (Extraordinary Dividends and Other Distributions), and Appendices A through G, being submitted by the Arizona Department of Insurance and Financial Institutions ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on November 12, 2023.
- b. This rulemaking does not relate to a five-year review report. The changes the Department proposes are to incorporate updates to the Arizona Holding Company Act (A.R.S. §§ 20-481 through 20-481.33) (Laws 2023, Ch. 25) which are required to retain the Department's accreditation with the National Association of Insurance Commissioners (NAIC).
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No new full-time employees are necessary to implement and enforce the rule.
- h. The following documents are also submitted to the Council with this cover letter:
  - i. The Notice of Final Rulemaking;
  - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;

- iii. Comments received – one comment from the American Property Casualty Insurance Association (APCIA); and
- iv. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or [mary.kosinski@difi.az.gov](mailto:mary.kosinski@difi.az.gov).

Sincerely,

*Barbara D. Richardson*

Barbara D. Richardson  
Cabinet Executive Officer, Executive Deputy Director

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE  
CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
– iNSURANCE DIVISION**

**PREAMBLE**

<b><u>1. Articles, Parts, or Sections Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R20-6-1407	Amend
R20-6-1408	Amend
R20-6-1409	Amend
Appendix A	Amend
Appendix B	Amend
Appendix C	Amend
Appendix D	Amend
Appendix E	Amend
Appendix F	Amend
Appendix G	Amend

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

Authorizing statute:           A.R.S. § 20-143  
Implementing statutes:        A.R.S. § 20-481.22

**3. The effective date of the rule:**

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1)**

**through (5):**

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 29 A.A.R. 2492, October 13, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 2374, October 13, 2023

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

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions

100 N. 15th Ave., Suite 261

Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov

Web site: <https://difi.az.gov>

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Arizona Department of Insurance and Financial Institutions – Insurance Division (“Department”) has proposed changes to A.A.C. Title 20, Chapter 6, Article 14 – Insurance Holding Company. This rulemaking is required by recent statutory changes to the Arizona Holding Company Act (A.R.S. §§ 20-481 through 20-481.33) (Laws 2023, Ch. 25) and is required to retain the Department’s accreditation with the National Association of Insurance Commissioners (NAIC).

The changes to Sections R20-6-1407 and R20-6-1408 address the continuation of essential services through affiliated intercompany agreements in the event of a conservatorship, supervision, or receivership of an insurer that is a member of an insurance holding company.

Section R20-6-1407 (Transactions Subject to Prior Notice – Notice Filing) will be amended to add additional requirements to proposed transactions which must be filed with the Director including defining “data,” specifying that it remains the property of the insurer, and is identifiable, segregated, and subject to the control of the insurer. An insurer is indemnified for certain actions of an affiliate. In the event of a supervision, conservatorship, or receivership of the insurer that is a member of an insurance holding company, all rights of the insurer extend to the receiver or Director; all records and data are identifiable, segregated, and made immediately available; essential services and infrastructure will be maintained; and the affiliates’ commitments extend to any guarantee association (if applicable).

Section R20-6-1408 (Enterprise Risk Report) will be amended to add subsections which authorize the lead state Commissioner to exempt from the Group Capital Calculation Report (which is part of the annual enterprise risk report) insurance holding company systems that meet certain criteria; accept a limited group capital filing if certain criteria are met; require previously exempted holding companies to file an annual group calculation; define the conditions where a non-U.S. jurisdiction is considered to “recognize and accept” a group capital calculation; and identify the list of these non-U.S. jurisdictions which are developed by the NAIC.

Section R20-6-1409 (Extraordinary Dividends and Other Distributions) will also be changed to correct a calculation and to conform to rulewriting standards.

The changes to the appendices the Department has proposed will reflect the structural change to the former Department of Insurance which merged with the Department of Financial Institutions to form the Department of Insurance and Financial Institutions (the “new agency”), on July 1, 2020. The former Department of Insurance became a division of the new agency. The appendices will also be changed to conform to rulewriting standards.

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

The Department did not review and does not propose to rely on any study relevant to this rulemaking.

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

The rulemaking does not diminish a previous grant of authority granted to the Department.

**9. The summary of the economic, small business, and consumer impact:**

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to address any misconduct. Instead, it is necessary to implement statutory changes recently made to the Arizona Holding

Company Act (A.R.S. §§ 20-481 through 20-481.33) (Laws 2023, Ch. 25).

- Because this rulemaking is not made in response to a perceived problem caused by the conduct of licensees, it is not intended to reduce the frequency of any potentially violative conduct.

Pursuant to A.R.S. § 41-1055(A)(2):

- The Department does not anticipate any additional costs to be incurred by licensees.
- The person listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

The Department has made one change in response to a comment filed by the American Property Casualty Insurance Association (“APCIA”). The APCIA made the following request to change the first sentence in subsection R20-6-1408(B):

“B. The lead state Commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state Commissioner makes a determination based upon ~~that~~ the filing that the insurance holding company system meets all of the following criteria:”

The Department has made that change to the subsection. The Department does not consider the change to be substantially different from the proposed rule within the meaning of A.R.S. § 41-1025.

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The Department published the Notice of Proposed Rulemaking on October 13, 2023. (29 A.A.R. 2374, October 13, 2023) At that time it also opened a 30-day Comment Period.

During the Comment Period, the Department received the comment submitted by APCIA discussed in Item 10 above. The Department did not receive any other comments.

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

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

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

Not applicable. A general permit is not applicable to insurance holding companies.

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

No federal law is applicable to the subject of the rule.

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

No formal analysis has been submitted to the Department that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states.

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

Not applicable. Neither the rules or appendices incorporate any reference materials.

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable. None of the Sections or Appendices included in this rulemaking were previously made, amended, or repealed as an emergency rule.

**15. The full text of the rules follows:**

**Title 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE**  
**CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS –**  
**INSURANCE DIVISION**

**ARTICLE 14. INSURANCE HOLDING COMPANY**

Section

R20-6-1407. Transactions Subject to Prior Notice – Notice Filing

R20-6-1408. Enterprise Risk Report; Group Capital Calculation

R20-6-1409. Extraordinary Dividends and Other Distributions

Appendix A. Form A – Statement Regarding the Acquisition of Control of or Merger with a  
Domestic Insurer

Appendix B. Form B – Insurance Holding Company System Annual Registration Statement

Appendix C. Form C – Summary of Registration Statement

Appendix D. Form D – Prior Notice of a Transaction

Appendix E. Form E – Pre-acquisition Notification Form Regarding the Potential Competitive  
Impact of a Proposed Merger or Acquisition by a Non-domiciliary Insurer Doing  
Business in this State or by a Domestic Insurer

Appendix F. Form F – Enterprise Risk Report

Appendix G. Instructions on Forms A, B, C, D, E and F

**ARTICLE 14. insurance holding company**

**R20-6-1407. Transactions Subject to Prior Notice – Notice Filing**

- A.** An insurer required to give notice of a proposed transaction pursuant to A.R.S. § 20-481.12 shall furnish the required information on Form D, attached hereto as Appendix D, in accordance with the instructions in Appendix G.
- B.** Agreements for cost sharing services and management services shall at a minimum and as applicable:
1. Identify the person providing services and the nature of such services;
  2. Set forth the methods to allocate costs;

3. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
4. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
5. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
6. Define ~~books and~~ records and data of the insurer to include all ~~books and~~ records and data developed or maintained under or related to the agreement; that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody, or control of the affiliate;
7. Specify that all ~~books and~~ records and data of the insurer are and remain the property of the insurer, ~~and are subject to control of the insurer;~~
  - a. Are subject to control of the insurer;
  - b. Are identifiable; and
  - c. Are segregated from all other persons' records and data and are readily capable of segregation at no additional cost to the insurer;
8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
9. Include standards for termination of the agreement with and without cause;
10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services; and for any actions by the affiliate that violate the provisions of the agreement required in subsections (B)(11), (B)(12), (B)(13), (B)(14), and (B)(15);
11. Specify that, if the insurer is placed ~~in~~ into supervision, conservatorship, or receivership or seized by the Director ~~under~~ pursuant to A.R.S. §§ 20-169(3), 20-171(A), 20-172, or the Arizona Receivership Act; or:

- a. All of the rights of the insurer under the agreement extend to the receiver or Director; and, to the extent permitted by the law of Arizona;
  - b. ~~All books and records will immediately be made available to the receiver or the Director, and shall be turned over to the receiver or Director immediately upon the receiver or Director's request;~~ All records and data of the insurer shall be identifiable and segregated from all other persons' records and data or readily capable of segregation at no additional cost to the receiver or the Director;
  - c. A complete set of records and data of the insurer will immediately be made available to the receiver or the Director, shall be made available in a usable format and shall be turned over to the receiver or Director immediately upon the receiver or the Director's request, and the cost to transfer data to the receiver or Director shall be fair and reasonable; and
  - d. The affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the receiver or Director;
12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed ~~in~~ into supervision, conservatorship, or receivership pursuant to A.R.S. §§ 20-169(3), 20-171(A), 20-172, or the Arizona Receivership Act; and
13. ~~Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under the Arizona Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.~~ Specify that the affiliate will provide the essential services for a minimum period of time after termination of the agreement, if the insurer is placed into supervision, conservatorship, or receivership pursuant to A.R.S. §§ 20-169(3), 20-171(A), 20-172, or the Arizona Receivership Act, as ordered or directed by the receiver or Director. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, Director, or supervising court;

14. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding supervision, conservatorship or receivership pursuant to A.R.S. §§ 20-169(3), 20-171(A), 20-172, or the Arizona Receivership Act, and will make them available to the receiver or Director as ordered or directed by the receiver or Director for so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, Director, or supervising court; and
15. Specify that, in furtherance of the cooperation between the receiver and the affected guaranty association(s) and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, conservatorship, or receivership pursuant to A.R.S. §§ 20-169(3), 20-171(A), 20-172, or the Arizona Receivership Act, and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under subsections (B)(11), (B)(12), (B)(13), and (B)(14) will extend to those guaranty association(s).

**R20-6-1408. Enterprise Risk Report; Group Capital Calculation**

- A.** The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to A.R.S. § 481.10(D) shall furnish the required information on Form F, attached hereto as Appendix F.
- B.** The lead state Commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state Commissioner makes a determination based upon the filing that the insurance holding company system meets all of the following criteria:
1. Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program of less than \$1,000,000,000;
  2. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

3. Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
  4. The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital calculation; and
  5. The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.
- C.** Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state Commissioner has the discretion to accept, in lieu of the group capital calculation, a limited group capital filing if the insurance holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000 and all of the following additional criteria are met:
1. Has no insurer within its holding company structure that are domiciled outside of the United States or one of its territories;
  2. Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and
  3. The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state Commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers' ability to honor policyholder obligations.
- D.** For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsections (B) or (C), the lead state Commissioner may require, at any time, the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in A.R.S. § 20-488.02 or a similar standard for a non-U.S. insurer;
  2. Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in A.R.S. § 20-220.01; or
  3. Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state Commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.
- E.** A non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation if it satisfies the following criteria:
1. With respect to A.R.S. § 20-481.10(D)(2)(a)(iv):
    - a. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC, under the NAIC Accreditation Program, shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or
    - b. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, the non-U.S. jurisdiction indicates formally in writing to the lead state, with a copy to the International Association of Insurance Supervisors, that the group capital calculation is an acceptable international capital standard. This will serve as documentation otherwise required in subsection (E)(1)(a).

2. The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction, that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The Commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

**F.** A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC Committee Process:

1. A list of jurisdictions that “recognize and accept” the group capital calculation pursuant to A.R.S. § 20-481.10(D)(2)(a)(iv), is published through the NAIC Committee Process to assist the lead state Commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under A.R.S. § 20-481.10(D)(2)(a)(iv). To assist with a determination under A.R.S. § 20-481.10(D)(2)(b), the list will also identify whether a jurisdiction that is exempted under either A.R.S. § 20-481.10(D)(2)(c) or (d) requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.
2. For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subsection (E)(1)(b) will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.
3. If the lead state Commissioner makes a determination pursuant to A.R.S. § 20-481.10(D)(2)(a)(iv) that differs from the NAIC List, the lead state Commissioner shall provide thoroughly documented justification to the NAIC and other states.
4. Upon determination by the lead state Commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital

calculation, the lead state Commissioner may provide a recommendation to the NAIC that the non –U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accept” the group capital calculation.

**R20-6-1409. Extraordinary Dividends and Other Distributions**

- A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
1. The amount of the proposed dividend;
  2. The date established for payment of the dividend;
  3. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
  4. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
    - a. The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer’s own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
    - b. Surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;
    - c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
    - d. If the insurer is not a life insurer, the net income, ~~net~~ less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
    - e. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer’s own securities in the preceding two calendar years.

5. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Director and the end of the month preceding the month in which the request for dividend approval is submitted; and
  6. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- B.** Subject to A.R.S. § 20-481.19, each registered insurer shall report to the Director all dividends and other distributions to shareholders within ~~5~~ five business days following the declaration thereof and at least 10 business days before payment of the dividend or distribution, including the same information required by subsection (A)(4)(a) through (e) of this rule.

**Appendix A. Form A - Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer**

**STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER  
WITH A DOMESTIC INSURER**

[Name of Domestic Insurer]

By

[Name of Acquiring Person (Applicant)]

Filed with the Arizona Department of Insurance and Financial Institutions

Dated: \_\_\_\_\_, 20 \_\_\_\_

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

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**ITEM 1. METHOD OF ACQUISITION**

[State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired. State the federal identification number and the NAIC number of the domestic insurer.]

**ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT**

- [(a) State the name and address of the applicant seeking to acquire control over the insurer.]
- [(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.]
- [(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant, including NAIC numbers for all insurers. No affiliate need be identified if its total assets are equal to less than ~~1/2~~ one-half of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing, indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to

any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.]

**ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT**

[On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if ~~(s)he is~~ they are an individual, or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

- (a) Name and business address;
- (b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;
- (c) Material occupations, positions, ~~officer~~ offices or employment during the last ~~5~~ five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;
- (d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

Such persons may also submit fingerprints and the fingerprint processing fee in accordance with A.R.S. § 20-481.03(B).]

**ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION**

- (a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.]
- (b) Explain the criteria used in determining the nature and amount of such consideration.]
- (c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.)

**ITEM 5. FUTURE PLANS OF INSURER**

[Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate ~~such~~ the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.]

**ITEM 6. VOTING SECURITIES TO BE ACQUIRED**

[State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.]

**ITEM 7. OWNERSHIP OF VOTING SECURITIES**

[State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.]

**ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER**

[Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.]

**ITEM 9. RECENT PURCHASES OF VOTING SECURITIES**

[Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefore. State whether any such shares so purchased are hypothecated.]

**ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE**

[Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.)

**ITEM 11. AGREEMENTS WITH BROKER-DEALERS**

[Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.]

**ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS**

- (a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.]
- (b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if ~~such~~ the information is available. The statements may be prepared on either an individual basis,

or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.]

[(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Appendix G.)

**ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT**

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within ~~fifteen (15)~~ 15 days after the end of the month in which the acquisition of control occurs.

**ITEM 14. SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

**SIGNATURE**

Pursuant to the requirements of A.R.S. § 20-481.02 \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL) \_\_\_\_\_  
Name of Applicant

BY \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that ~~(s)he has~~ they have duly executed the attached application dated \_\_\_\_\_,  
20\_\_\_\_, for and on behalf of \_\_\_\_\_; that ~~(s)he is~~ they are the \_\_\_\_\_

(Name of Applicant)

(Title of Officer)

of such company and that ~~(s)he is~~ they are authorized to execute and file such instrument. Deponent further says that ~~(s)he is~~ they are familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of ~~his/her~~ their knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)



**Appendix B. Form B - Insurance Holding Company System Annual Registration Statement**

**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT**

Filed with the ~~Insurance Department of the State of Arizona~~ Arizona Department of Insurance and Financial Institutions

By

\_\_\_\_\_  
[Name of Registrant]

On Behalf of Following Insurance Companies

Name            Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning  
This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. IDENTITY AND CONTROL OF REGISTRANT**

[Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the federal identification number and the NAIC number of each, the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.]

## ITEM 2. ORGANIZATIONAL CHART

[Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., - corporation, trust, partnership) and the state or other jurisdiction of domicile.]

## ITEM 3. THE ULTIMATE CONTROLLING PERSON

[As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;
- (e) The principal business of the person;
- (f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and
- (g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.]

## ITEM 4. BIOGRAPHICAL INFORMATION

[If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, ~~his or her~~ the individual's principal occupation and all offices and positions held during the past ~~5~~ five years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, ~~his or her~~ the individual's principal occupation and all offices and positions held during the past ~~5~~ five years, and any conviction of crimes other than minor traffic violations.]

## ITEM 5. TRANSACTIONS AND AGREEMENTS

[Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;

- (e) All management agreements, service contracts and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and
- (i) Any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of A.R.S. § 20-481.09.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving ~~1/2~~ one-half of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Director and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the Registrant.]

#### **ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

[A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.]

#### **ITEM 7.a. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS**

[The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.]

#### **ITEM 7.b. STATEMENT REGARDING CORPORATE GOVERNANCE AND INTERNAL CONTROLS**

[The insurer shall furnish a statement that the insurer's board of directors oversees corporate governance and internal controls of the insurer and that the insurer's officers or senior management have approved, implemented and maintain and monitor corporate governance and internal control procedures.]

**ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS**

- [(a) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Director otherwise requires, on consolidated basis if consolidated statements are prepared in the usual course of business. a

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Director. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary State and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is

not aware of any material modifications that should be made to the statements to be in conformity with generally accepted accounting

financial statements in order for the principles.

- (c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Forms B and G.]

**ITEM 9. FORM C REQUIRED**

[A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.]

**ITEM 10. SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

**SIGNATURE**

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant \_\_\_\_\_ has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that ~~(s)he has~~ they have duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that ~~(s)he is~~ they are

(Name of Applicant)

the \_\_\_\_\_ of such company and that ~~(s)he is~~ they are authorized to execute and file such

(Title of Officer)

instrument. Deponent further says that ~~(s)he is~~ they are familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of ~~his/her~~ their knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**Appendix C. Form C - Summary of Changes to Registration Statement**

**SUMMARY OF CHANGES TO REGISTRATION STATEMENT**

Filed with the ~~Insurance Department of the State of Arizona~~ Arizona Department of Insurance and Financial Institutions

By

\_\_\_\_\_  
[Name of Registrant]

On Behalf of Following Insurance Companies

Name      Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Director, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.]

**SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant \_\_\_\_\_ has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL) \_\_\_\_\_

Name of Applicant

BY \_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

Attest:

\_\_\_\_\_

(Signature of Officer)

\_\_\_\_\_

(Title)

**CERTIFICATION**

The undersigned deposes and says that ~~(s)he has~~ they have duly executed the attached annual registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that ~~(s)he is~~ they are the \_\_\_\_\_  
(Name of Applicant)

(Title of Officer)

of such company and that ~~(s)he is~~ they are authorized to execute and file such instrument. Deponent further says that ~~(s)he is~~ they are familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of ~~his/her~~ their knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)



**Appendix D. Form D - Prior Notice of a Transaction**

**PRIOR NOTICE OF A TRANSACTION**

Filed with the ~~Insurance Department of the State of Arizona~~ Arizona Department of Insurance and Financial Institutions

By

\_\_\_\_\_

[Name of Registrant]

On Behalf of Following Insurance Companies

Name      Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. IDENTITY OF PARTIES TO TRANSACTION**

[Furnish the following information for each of the parties to the transaction:

- (a) Name;
- (b) Home office address;

- (c) Principal executive office address;
- (d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.;
- (e) A description of the nature of the parties' business operations;
- (f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;
- (g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.]

**ITEM 2. DESCRIPTION OF THE TRANSACTION**

[Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under A.R.S. § 20-481.12(B);
- (b) A statement of the nature of the transaction;
- (c) If a notice for amendments or modifications, the reasons for the change and the financial impact on the domestic insurer;
- (d) A statement of how the transaction meets the "fair and reasonable" standard of A.R.S. § 20-481.12(A)(1); and
- (e) The proposed effective date of the transaction.]

**ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS**

[Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

#### **ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE**

[If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

#### **ITEM 5. REINSURANCE**

[If the transaction is a reinsurance agreement or modification thereto, as described by A.R.S. § 20-481.12(B)(3)(b), or a reinsurance pooling agreement or modification thereto as described by A.R.S. § 20-481.12(B)(3)(a), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.]

**ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS**

[For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed;
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.]

[For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement;
- (b) A description of the period of time during which the agreement is to be in effect;
- (c) A brief description of each party's expenses or costs covered by the agreement;
- (d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;]
- (e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
- (f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
- (g) A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.]

**ITEM 7. SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.09, \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL) \_\_\_\_\_  
Name of Applicant

By \_\_\_\_\_  
(Name) of Applicant

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that ~~(s)he has~~ they have duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that ~~(s)he is~~ they are the \_\_\_\_\_  
(Name of Applicant) (Title of Officer)

of such company and that ~~(s)he is~~ they are authorized to execute and file such instrument. Deponent further says that ~~(s)he is~~ they are familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of ~~his/her~~ their knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_



**Appendix E. Form E - Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-domiciliary Insurer Doing Business in this State or by a Domestic Insurer**

**PRE-ACQUISITION NOTIFICATION FORM  
REGARDING THE POTENTIAL COMPETITIVE IMPACT  
OF A PROPOSED MERGER OR ACQUISITION BY A  
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS  
STATE OR BY A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of Other Person Involved in Merger or Acquisition

**Filed with the Arizona Department of Insurance and Financial Institutions**

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, title, address and telephone number of person completing this statement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. NAME AND ADDRESS**

[State the name and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.]

**ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES**

[State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.]

**ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION**

[State the nature and purpose of the proposed merger or acquisition.]

**ITEM 4. NATURE OF BUSINESS**

[State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.]

**ITEM 5. MARKET AND MARKET SHARE**

[State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in A.R.S. § 20-481.25(D). If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.]

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

**Appendix F. Form F - Enterprise Risk Report**

**ENTERPRISE RISK REPORT**

Filed with the Arizona Department of Insurance and Financial Institutions

By

\_\_\_\_\_  
Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name      Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. ENTERPRISE RISK**

[The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in A.R.S. § 20-481(4), provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities with the insurance holding company system;

Any changes of shareholders of the insurance holding company system exceeding ~~ten percent (10%)~~ 10% or more of voting securities;

Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system<sup>2</sup> ;

Business plan of the insurance holding company system and summarized strategies for next 12 months;

Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

Identification of insurance holding company system capital resources and material distribution patterns;

Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (include both the rating score and outlook);

Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

[The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.]

## **ITEM 2. OBLIGATION TO REPORT**

[If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.]



## **Appendix G. Instructions on Forms A, B, C, D, E and F**

### **INSTRUCTIONS ON FORMS A, B, C, D, E AND F**

#### **FORMS - GENERAL REQUIREMENTS**

Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by A.R.S. §§ 20-481.02, 20-481.09, 20-481.12 and 20-481.25. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

One original paper statement excluding exhibits, and all other papers and documents shall be filed with the Director. The statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement. All paper filings shall be by personal delivery or mail addressed to: Arizona Department of Insurance, ~~Financial Affairs Division~~, and Financial Institutions, Insurance Financial Affairs Division.

In addition to the filed paper statement, a copy of the statement, including exhibits, and all other papers and documents filed as a part thereof, shall be filed electronically.

All filed documents shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

If an applicant requests a hearing on a consolidated basis under A.R.S. § 20-481.07, in addition to filing the Form A with the Director, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

#### **FORMS - INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS**

Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Director which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference

particular parts of any exhibit or document currently on file with the Director which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

#### **FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH**

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there ~~may~~ shall be filed with the Director as a separate document:

- (1) Identifying the information, document or report in question;
- (2) Stating why the filing thereof at the time required is impractical; and
- (3) Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Director within 60 days after receipt thereof enters an order denying the request.

#### **FORMS - ADDITIONAL INFORMATION AND EXHIBITS**

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Director may request such further information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the forms. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

**A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement**

**Title 20. Commerce, Financial Institutions and Insurance**

**Chapter 6. Department of Insurance and Financial Institutions**

**– Insurance Division**

**Article 14. Insurance Holding Company**

**A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.**

The Arizona Department of Insurance and Financial Institutions – Insurance Division (“Department”) has proposed changes to A.A.C. Title 20, Chapter 6, Article 14 – Insurance Holding Company. This rulemaking is required by recent statutory changes to the Arizona Holding Company Act (A.R.S. §§ 20-481 through 20-481.33) (Laws 2023, Ch. 25) and are required to retain the Department’s accreditation with the National Association of Insurance Commissioners (NAIC).

The changes to Sections R20-6-1407 and R20-6-1408 address the continuation of essential services through affiliated intercompany agreements in the event of a conservatorship, supervision, or receivership of an insurer that is a member of an insurance holding company.

Section R20-6-1407 (Transactions Subject to Prior Notice – Notice Filing) will be amended to add additional requirements to proposed transactions which must be filed with the Director including defining “data,” specifying that it remains the property of the insurer, and is identifiable, segregated, and subject to the control of the insurer. An insurer is indemnified for certain actions of an affiliate. In the event of a supervision, conservatorship, or receivership of the insurer that is a member of on insurance holding company, all rights of the insurer extend to the receiver or Director; all records and data are identifiable, segregated, and made immediately available; essential services and infrastructure will be maintained; and the affiliates’ commitments extend to any guarantee association (if applicable).

Section R20-6-1408 (Enterprise Risk Report) will be amended to add subsections which authorize the lead state Commissioner to exempt from the Group Capital Calculation Report (which is part of the annual enterprise risk report) insurance holding company systems that meet certain criteria; accept a limited group capital filing if certain criteria

are met; require previously exempted holding companies to file an annual group calculation; define the conditions where a non-U.S. jurisdiction is considered to “recognize and accept” a group capital calculation; and identify the list of these non-U.S. jurisdictions which are developed by the NAIC.

Section R20-6-1409 (Extraordinary Dividends and Other Distributions) will also be changed to correct a calculation and to conform to rulewriting standards.

The changes to the appendices the Department has proposed will reflect the structural change to the former Department of Insurance which merged with the Department of Financial Institutions to form the Department of Insurance and Financial Institutions (the “new agency”), on July 1, 2020. The former Department of Insurance became a division of the new agency. The appendices will also be changed to conform to rulewriting standards.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

**A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.**

A.A.C. Title 20, Chapter 6, Article 14 applies to Insurance Holding Company systems as defined at A.R.S. § 20-481(7).

**A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:**

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.**

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rulemaking.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

**(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to insurers subject to the rules.

**A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**

The Department does not anticipate any impact on the private employment of insurers subject to the rules. Likewise, the Department does not anticipate any impact on public employment in the Department.

**A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

**(a) An identification of the small businesses subject to the proposed rulemaking.**

The rules apply to types of insurance companies that would not qualify as small businesses.

**(b) The administrative and other costs required for compliance with the proposed rulemaking.**

The current changes to the rules do not impose any additional administrative or other costs required for compliance with the proposed rulemaking.

**(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.**

Not applicable.

- 1. Establish less stringent compliance or reporting requirements in the rule for small businesses.**
- 2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.**
- 3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.**
- 4. Establish performance standards for small businesses to replace design or operational standards in the rule.**
- 5. Exempt small businesses from any or all requirements of the rule.**

**(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Private persons and consumers are not directly affected by the proposed rulemaking.

**A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.**

No impact on state revenues is anticipated.

**A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

**A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

The rules are not based on any data.

Authorizing Statute: A.R.S. § 20-143

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

Implementing Statute: A.R.S. § 20-481.22

20-481.22. Power to make rules

The director may, upon notice and opportunity for all interested persons to be heard, issue such rules and orders as shall be necessary to carry out the provisions of this article, subject to title 41, chapter 6.

**C-3.**

**DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**

Title 20, Chapter 6, Article 11

**Amend:** R20-6-1101



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 8, 2024

**SUBJECT:** DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
Title 20, Chapter 6, Article 11

**Amend:** R20-6-1101

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### **Summary:**

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to amend one (1) rule in Title 20, Chapter 6 related to Medicare Supplemental Insurance; Incorporation by Reference and Modifications. Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section so that Arizona may retain its full authority to regulate minimum standards for Medicare Supplement insurance. With this rulemaking, the Department incorporates, by reference, the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act ("Model Regulation").

This rulemaking does not establish or increase a fee and does not relate to a prior 5YRR.

**1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

The Department states the rules do not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department states no study was reviewed or relied upon during the course of this rulemaking.

4. **Summary of the agency's economic impact analysis:**

According to the Department, the director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. 1395ss) and federal laws or regulations pertaining to that section so that Arizona may retain its full authority to regulate minimum standards for Medicare Supplement insurance. The Department seeks to amend its rules to reflect the most recent changes made by the National Association of Insurance Commissioners (NAIC) to the Model Regulation adopted in Fall 2022. In addition, the Department needs to update its address, inform the public that the incorporated by reference materials are available on its website, and correct a statutory reference.

The Department does not anticipate any additional costs to be incurred by licensees.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

6. **What are the economic impacts on stakeholders?**

The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to insurers subject to the rules. The Department anticipates no impact on: the Department itself, political subdivisions of this state, or private employment of insurers.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

ARS §41-1057(D)(7) states the Council shall not approve the rule unless “[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.”

ARS § 41-1025(B) continues with “In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.”

The Department has indicated that the amendments made between the proposed and final rulemakings are not considered a substantial change as the interests of the persons affected by the rule have not changed, the subject matter of the rule has not changed, and the differences between the proposed and final rules are minimal.

**8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department received no comments regarding this rulemaking.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states these rules do not require a permit or license as A.R.S. § 20-216 authorizes the Department to issue a certificate of authority to insurers doing business in Arizona if they meet statutorily specified criteria.

**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states the rules are not more stringent than corresponding federal law as A.R.S. § 20-1133 requires the Director to adopt rules to comply with the requirements of the social security disability amendments of 1980 and federal laws or regulations pertaining to that section.

**11. Conclusion**

This regular rulemaking from the Department of Insurance and Financial Institutions seeks to amend one rule in Title 20, Chapter 6 related to Medicare Supplemental Insurance; Incorporation by Reference and Modifications. As indicated above, this rulemaking does not establish or increase a fee and does not relate to a prior 5YRR. The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.



**Arizona Department of Insurance and Financial Institutions**  
100 N 15<sup>th</sup> Avenue, Suite 261, Phoenix, Arizona 85007  
(602) 364-3100 | [difi.az.gov](http://difi.az.gov)

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**Katie M. Hobbs, Governor**  
**Barbara D. Richardson,**  
**Cabinet Executive Officer**  
**Executive Deputy Director**

DATE: February 6, 2024

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Frank Thorwald, Acting Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions  
Insurance Division  
A.A.C. Title 20, Chapter 6, Article 11 – Medicare Supplement Insurance; Section R20-6-1101

Dear Acting Chairperson Thorwald:

Please find enclosed the Final Rulemaking for A.A.C. Title 20, Chapter 6, Article 11, Section R20-6-1101 (Incorporation by Reference and Modifications), being submitted by the Arizona Department of Insurance and Financial Institutions ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on November 12, 2023.
- b. This rulemaking does not relate to a five-year review report. The changes the Department proposes are to reflect updates in its address and the incorporated by reference materials.
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No new full-time employees are necessary to implement and enforce the rule.
- h. The following documents are also submitted to the Council with this cover letter:
  - i. The Notice of Final Rulemaking;
  - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
  - iii. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or [mary.kosinski@difi.az.gov](mailto:mary.kosinski@difi.az.gov).

Sincerely,

*Barbara D. Richardson*

Barbara D. Richardson  
Cabinet Executive Officer, Executive Deputy Director

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE  
CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
– iNSURANCE DIVISION**

**PREAMBLE**

**1. Articles, Parts, or Sections Affected (as applicable)                      Rulemaking Action**

R20-6-1101

Amend

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

Authorizing statute:                      A.R.S. § 20-143(A)

Implementing statutes:                      A.R.S. § 20-1133

**3. The effective date of the rule:**

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable. The Department is proposing the standard 60-day delayed effective date

pursuant to A.R.S. § 41-1032.

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 29 A.A.R. 2492, October 13, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 2371, October 13, 2023

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

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions

100 N. 15th Ave., Suite 261

Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov

Web site: <https://difi.az.gov>

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Arizona Department of Insurance and Financial Institutions – Insurance Division (“Department”) has proposed changes to A.A.C. Title 20, Chapter 6, Article 11: Medicare Supplement Insurance, Section R20-6-1101. Incorporation by Reference and Modifications. This Section incorporates, by reference, the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (“Model Regulation”). Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42

U.S.C. § 1395ss) and federal laws or regulations pertaining to that section so that Arizona may retain its full authority to regulate minimum standards for Medicare Supplement insurance.

Because A.R.S. § 41-1028 requires a statement that incorporated matter does not include any later amendments or editions of the incorporated matter, the Department seeks to amend Section R20-6-1101 to accomplish the mandate of A.R.S. § 20-1133 to reflect the most recent changes made by the NAIC to the Model Regulation adopted in Fall, 2023. In addition, the Department's office was moved again since its last rulemaking in 2019 (25 A.A.R. 1923, August 2, 2019). The Department needs to update its address to remain compliant with A.R.S. § 41-1028(D) which requires the rules to state where copies of incorporated matter are available from the agency issuing the rule and from the organization originally issuing the matter. Lastly, the Department would like to inform the public that the incorporated by reference materials are available on its website, and to correct a statutory reference.

The Department did not receive any comments from the public on the proposed rulemaking during the 30-day comment period.

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

The Department did not review and does not propose to rely on any study relevant to this rulemaking.

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

The rulemaking does not diminish a previous grant of authority granted to the Department.

**9. The summary of the economic, small business, and consumer impact:**

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to address any misconduct. Instead, it is necessary to update the incorporated by reference materials to the most recent version available.
- Because this rulemaking is not made in response to a perceived problem caused by the conduct of licensees, it is not intended to reduce the frequency of any potentially violative conduct.

Pursuant to A.R.S. § 41-1055(A)(2):

- The Department does not anticipate any additional costs to be incurred by licensees.
- The person listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

The Department has updated the incorporated by reference material version to the most recent version which was adopted by the National Association of Insurance Commissioners shortly after the Department originally submitted this Notice of Final Rulemaking to the Governor’s Regulatory Review Council. This Notice is a revised version to reflect the change.

Because the regulated community currently complies with the more recent version, this change is not considered a substantial change within the meaning of A.R.S. §

41-1025(B).

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The Department published the Notice of Proposed Rulemaking for Section R20-6-1101 on October 13, 2023. (29 A.A.R. 2371, October 13, 2023) At that time it also opened a 30-day comment period. During the comment period, no one submitted a comment to the Department or requested an oral proceeding.

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

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

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

Not applicable. Article 11 contains only one Section (R20-6-1101) pertaining to Medicare Supplement Insurance. A.R.S. § 20-216 authorizes the Department to issue a certificate of authority to insurers doing business in Arizona if they meet statutorily specified criteria. No general permit is used.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is**

**more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

A.R.S. § 20-1133 requires the Director to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section so that Arizona may retain its full authority to regulate minimum standards for Medicare Supplement insurance. The rule is not more stringent than the federal law.

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

No formal analysis has been submitted to the Department that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states.

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

Section R20-6-1101 incorporates the current NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (and no future editions).

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The Department previously adopted Article 11 as an emergency rule, effective December 18, 1991 (*Arizona Administrative Code 1974- Supplement 91-4, Title 4*. Arizona Memory

Project, accessed 15/11/2023, <https://azmemory.azlibrary.gov/nodes/view/203169>).

The Department again adopted Article 11 as an emergency rule, effective March 17, 1992 (*Arizona Administrative Code 1974- Supplement 92-1, Title 4*. Arizona Memory Project, accessed 15/11/2023, <https://azmemory.azlibrary.gov/nodes/view/203170>).

The Department adopted the emergency rule with changes made to Appendices A and B, effective May 28, 1992 (*Arizona Administrative Code 1974- Supplement 92-2, Title 4*. Arizona Memory Project, accessed 15/11/2023, <https://azmemory.azlibrary.gov/nodes/view/203171>).

The Secretary of State recodified R20-6-1101 from R4-14-1101 in 1995 (*Arizona Administrative Code 1974- Supplement 95-1, Title 4*. Arizona Memory Project, accessed 15/11/2023, <https://azmemory.azlibrary.gov/nodes/view/203232>).

The Department made subsequent amendments to R20-6-1101 effective August 16, 1996 (*Arizona Administrative Code 1974- Supplement 96-3, Title 20*. Arizona Memory Project, accessed 15/11/2023, <https://azmemory.azlibrary.gov/nodes/view/202937>); May 13, 2002 (8 A.A.R. 2454, June 7, 2002); November 12, 2005 (11 A.A.R. 3671, September 30, 2005); June 2, 2009 (15 A.A.R. 996, June 19, 2009); and September 8, 2019 (25 A.A.R. 1923, August 2, 2019).

**15. The full text of the rules follows:**

**Title 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE**  
**CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS –**  
**INSURANCE DIVISION**

**ARTICLE 11. medicare supplement insurance**

Section

R20-6-1101. Incorporation by Reference and Modifications

**ARTICLE 11. medicare supplement insurance**

**R20-6-1101. Incorporation by Reference and Modifications**

- A.** The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, ~~August 2016~~ Fall 2023 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 100 N. 15th Ave., ~~Suite 102,~~ Suite 261, Phoenix, AZ ~~85007-2624~~ 85007-2630 and available on its website at: <https://difi.az.gov/insurance-division-rulemaking>. The Model Regulation is also available from the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197.
- B.** The Model Regulation is modified as follows:
1. In addition to the terms defined in the Model Regulation, the following definitions apply:
    - a. “Agent” means an insurance producer as defined in A.R.S. § 20-281(5).
    - b. “Commissioner” means the Director of the Arizona Department of Insurance: and Financial Institutions.
    - c. “HMO” and “health maintenance organization” mean a health care services organization as defined in ~~A.R.S. § 20-1051(7).~~ A.R.S. § 20-1051(6).
    - d. “Regulation” means Article.
  2. Section 3(A)(2) reads:

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state including association plans.

3. Section 8(A)(7)(c) reads:

c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

4. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

5. Section 8.1(A)(7)(c) is revised to read as follows:

Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the

policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

6. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

7. Section 9.2 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of A.R.S. § 20-1133.

8. Section 15(G) is revised as follows:

An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.

9. Section 23 is revised as follows:

**A.** If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to

preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

- B.** If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

**A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement**

**Title 20. Commerce, Financial Institutions and Insurance**

**Chapter 6. Department of Insurance and Financial Institutions**

**– Insurance Division**

**Article 11. Medicare Supplement Insurance**

**A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.**

The Arizona Department of Insurance and Financial Institutions – Insurance Division (“Department”) has proposed changes to A.A.C. Title 20, Chapter 6, Article 11: Medicare Supplement Insurance, Section R20-6-1101. Incorporation by Reference and Modifications.

This Section incorporates, by reference, the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (“Model Regulation”). Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section so that Arizona may retain its full authority to regulate minimum standards for Medicare Supplement insurance.

Because A.R.S. § 41-1028 requires a statement that incorporated matter does not include any later amendments or editions of the incorporated matter, the Department seeks to amend R20-6-1101 to accomplish the mandate of A.R.S. § 20-1133 to reflect the most recent changes made by the NAIC to the Model Regulation adopted in Fall, 2022.

In addition, the Department’s office was moved again since its last rulemaking in 2019 (25 A.A.R. 1923, August 2, 2019). The Department needs to update its address to remain compliant with A.R.S. § 41-1028(D) which requires the rules to state where copies of incorporated matter are available from the agency issuing the rule and from the organization originally issuing the matter.

Lastly, the Department would like to inform the public that the incorporated by reference materials are available on its website, and to correct a statutory reference.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

**A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.**

Section R20-6-1101 applies to insurers who issue Medicare Supplement Insurance policies to individuals covered under Medicare.

**A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:**

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.**

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rulemaking.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

**(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to insurers subject to the rules.

**A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**

The Department does not anticipate any impact on the private employment of insurers subject to the rules. Likewise, the Department does not anticipate any impact on public employment in the Department.

**A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

**(a) An identification of the small businesses subject to the proposed rulemaking.**

The rules apply to types of insurance companies that would not qualify as small businesses.

**(b) The administrative and other costs required for compliance with the proposed rulemaking.**

The current changes to the rules do not impose any additional administrative or other costs required for compliance with the proposed rulemaking.

**(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.**

Not applicable.

- 1. Establish less stringent compliance or reporting requirements in the rule for small businesses.**
- 2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.**
- 3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.**
- 4. Establish performance standards for small businesses to replace design or operational standards in the rule.**
- 5. Exempt small businesses from any or all requirements of the rule.**

**(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Private persons and consumers are not directly affected by the proposed rulemaking.

**A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.**

No impact on state revenues is anticipated.

**A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

**A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

The rules are not based on any data.

Authorizing Statute: A.R.S. § 20-143

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

Implementing Statute: A.R.S. § 20-1133

20-1133. Medicare supplement insurance; early enrollment discounts; applicability

A. The director shall adopt rules necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265; 42 United States Code section 1395ss) and any federal laws or regulations pertaining to that section, so that this state may retain its full authority to regulate minimum standards for medicare supplement insurance.

B. For the purposes of this section, an insurer may file for medicare supplement rates that include an early enrollment discount that will not be considered an attained age rating structure. An early enrollment discount shall diminish over a period of time and is only available to enrollees who purchase the plan within the early enrollment period designated by the insurer. Insurers shall disclose to all applicants how the early enrollment discount will diminish over time.

C. Subject to the other limitations provided in this subsection, a benefit mandated in this title for health insurance policies does not apply to medicare supplement insurance policies unless the mandated policy benefit is set forth in rules adopted pursuant to this section or unless the statute mandating the policy benefit expressly states that it is made specifically applicable to medicare supplement insurance policies. A medicare supplement insurance policy may not contain any exclusion for services provided by any type of properly licensed health care provider if the provider's services are eligible for medicare reimbursement and if the specific services in question would be covered by medicare. The scope of benefits of a medicare supplement policy may not be less than the minimum level of benefits established by federal law.

D. Notwithstanding any other provision of this title, rules adopted pursuant to this section apply to insurance provided under disability insurance policies, under subscription contracts of hospital, medical, dental or optometric service corporations, under certificates of fraternal benefit societies, under evidences of coverage of health care services organizations and under coverages issued by any other insurer, which policies, contracts, certificates, membership coverages, evidences of coverage and coverages are delivered or issued for delivery in this state on or after the effective date of rules adopted pursuant to subsection A of this section. In adopting the rules required by subsection A of this section, the director shall prescribe an effective date of the rules that will allow insurers sufficient time to bring their forms and practices into compliance with the requirements of the rule.

**C-4.**

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 16, Article 10

**New Section:** R9-16-1002, R9-16-1003, R9-16-1004, R9-16-1005, R9-16-1006, R9-16-1007

**New Table:** Table 10.1



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 8, 2024

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 16, Article 10

**New Section:** R9-16-1002, R9-16-1003, R9-16-1004, R9-16-1005, R9-16-1006, R9-16-1007

**New Table:** Table 10.1

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### **Summary:**

This regular rulemaking from the Department of Health Services (Department) seeks to add six (6) new sections and one (1) new table related to Occupational Licensing. Specifically, these new sections create a new article, Article 10, related to Out of State Telehealth Providers. Under A.R.S. §§ 36-3606 and 36-3608, the Department is required to allow a health care provider who is not licensed in Arizona to provide telehealth services to a client located in Arizona if the health care provider registers with the Department and pays a registration fee. This rulemaking will allow for the expansion of telemedicine in Arizona and provide greater opportunities for accessible medical services for low-income families and those living in rural areas, protects vulnerable populations, and allows snowbirds visiting our state to receive telemedicine from their home state. Under A.R.S. § 36-3606, a new program fee is established to allow out-of-state providers to apply to register with the Department to become a registered health care provider and pay the \$100 registration fee.

This rulemaking is not related to a prior 5YRR.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

Under A.R.S. § 36-3606, a new program fee is established to allow out-of-state providers to apply to register with the Department to become a registered health care provider and pay the \$100 registration fee.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department states no study was reviewed or relied upon during the course of this rulemaking.

4. **Summary of the agency's economic impact analysis:**

This rulemaking requires the Arizona Department of Health Services to allow a health care provider who is not licensed in Arizona to provide telehealth services to a client located in Arizona if the provider registers with the Department and pays a registration fee. The rulemaking allows for the expansion of telemedicine in Arizona and provides greater opportunities for accessible medical services while protecting public health. The Department believes that the new rules may increase the regulatory burden and impose a cost on some affected parties and is optimistic that employment and revenue will increase the demand for more registered health care providers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

6. **What are the economic impacts on stakeholders?**

Stakeholders are identified as the Department; audiologists; hearing aid dispensers; midwives; radiologic technologists; speech-language pathologists; speech-language pathologist assistants who are licensed out-of-state and wish to become a registered health care provider in Arizona; clients (seeking healthcare via telehealth); and the general public.

The rulemaking would require staffing to ensure compliance while also establishing a new program fee for health care providers to register with the Department. Additionally, the rulemaking requires that such providers maintain a professional liability insurance policy which includes coverage for telehealth services.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department states no changes were made between the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

During the public comment period, the Department received one comment that resulted in the opposition of including radiologic technologists in out-of-state telehealth providers. The Department responded that radiologic technologists must adhere to their scope of practice only when engaging in telehealth.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

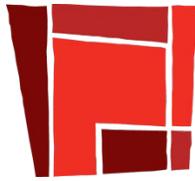
The Department believes that under A.R.S. § 41-1037(A)(2) and (3) that a general permit is not applicable as A.R.S. § 36-3606 provides the Department authority to deny, revoke, or suspend an applicant or registered health care provider's license.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that although there is no federal rule applicable to the exact subject of the rule, the rules are not more stringent than similar laws issued by the Department of Health and Human Services

11. **Conclusion**

This regular rulemaking from the Department of Health Services seeks to add six new sections and one new table related to Occupational Licensing. As indicated above, the Department is establishing a new fee under A.R.S. § 36-3606 and this rulemaking is not related to a 5YRR. The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

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POLICY & INTERGOVERNMENTAL AFFAIRS

January 18, 2024

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 16, Article 10, Out-of-State Telehealth Providers

Dear Ms. Sornsin:

1. The close of record date: November 20, 2023
2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 16, Article 10 does not relate to a five-year review report.
3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:  
The rulemaking establishes a new program fee, authorized by A.R.S. § 36-3606.
4. Whether the rulemaking contains a fee increase:  
The new fee in the rulemaking constitutes a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:  
The Department is not requesting an immediate effective date for the rules.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on its evaluation of or justification for the rule.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee there are no new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;

2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
3. General and specific statutes authorizing the rules, including relevant statutory definitions.

The Department's point of contact for questions about the rulemaking documents is Lucinda Feeley at [Lucinda.Feeley@azdhs.gov](mailto:Lucinda.Feeley@azdhs.gov).

Sincerely,

Stacie Gravito  
Director's Designee

SG: lf

Enclosures

Katie Hobbs | Governor

Jennifer Cunico, MC |

Cabinet Executive Officer  
Executive Deputy Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES –**  
**OCCUPATIONAL LICENSING**

**PREAMBLE**

<b><u>1. Article, Part or Sections Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
Article 10	New Article
R9-16-1002	New Section
R9-16-1003	New Section
R9-16-1004	New Section
Table 10.1	New Table
R9-16-1005	New Section
R9-16-1006	New Section
R9-16-1007	New Section

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

Authorizing Statutes: A.R.S. §§ 36-104(3) and 36-136(G)

Implementing Statutes: A.R.S. §§ 36-3606 and 36-3608

**3. The effective date of the rules:**

The Arizona Department of Health Services (Department) requests the normal 60-day delayed effective date for this rulemaking.

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 2348, October 6, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 2515, October 20, 2023

**5. The agency’s contact person who can answer questions about the rulemaking:**

Name: Thomas Salow, Assistant Director

Address: Arizona Department of Health Services

Public Health Licensing Services

150 N. 18th Ave., Suite 400

Phoenix, AZ 85007

Telephone: (602) 364-1935

Fax: (602) 34-3808

E-mail: Thomas.Salow@azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Avenue, Suite 200  
Phoenix, AZ 85007-3232

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stacie.Gravito@azdhs.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:**

Arizona Revised Statutes (A.R.S.) §§ 36-3606 and 36-3608, as added by Laws 2021, Ch. 320, requires the Arizona Department of Health Services (Department) to allow a health care provider who is not licensed in Arizona to provide telehealth services to a client located in Arizona if the health care provider registers with the Department and pays a registration fee. The Department plans to adopt rules to implement Laws 2021, Ch. 320, which was signed into law on May 5, 2021, to preserve the public peace, health or safety. The rulemaking is necessary to allow for the expansion of telemedicine in Arizona and provide greater opportunities for accessible medical services while protecting public health. Telehealth expands access to medical services for low-income families and those living in rural areas, protects vulnerable populations, and allows snowbirds visiting our state to receive telemedicine from their home state. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department is promulgating new rules in 9 A.A.C. 16, Article 10 to align with statutory requirements related to out-of-state telehealth providers according to A.R.S. Title 41, Chapter 6. The new rules will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

The Department did not review or rely on any study for this rulemaking.

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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The Department has promulgated new rules through regular rulemaking for 9 A.A.C. 16, Article 10 Out-of-State Telehealth Providers, and an economic, small business, and consumer impact statement (EIS) that identified affected persons, costs, and benefits associated with the rulemaking. The Department in this 2022 out-of-state telehealth EIS designates costs and benefits as ‘minimal’ when more than \$0 and less than \$1,000, ‘moderate’ when between \$1,000 and \$10,000, and ‘substantial’ when \$10,000 or greater. A cost or benefit is indicated as significant when meaningful or important but not readily subject to quantification. No new full-time employees are required due to this rulemaking. In this regular rulemaking, the Department will be adding a new Article with eight new Sections and one Table to implement Laws 2021, Ch. 320.

New rules include Definitions, Initial Application, Renewal, Time-frames, Changes Affecting a Registration, Providing Health Care Services Through Telehealth, and Enforcement in Sections R9-16-1001 through R9-16-1007. The Department identifies affected persons to be the Department; audiologists, hearing aid dispensers, midwives, radiologic technologists, speech-language pathologists (SLPs), and speech-language pathologist assistants (SLPAs) who wish to become a registered health care provider; clients (seeking healthcare via telehealth) and the general public.

The use of telemedicine has been shown to allow for better long-term care management and patient satisfaction; it also offers a new means to locate health information, and communicate with practitioners, thereby increasing convenience for the patient and reducing the amount of potential travel required for both the health care provider and the client. With the expansion of telehealth services in Arizona, the new rules are expected to enhance follow-up care and improve client access to services. The Department anticipates to incur minimal costs for promulgating new rules for out-of-state telehealth providers, as well as costs related to the allocation of administrative staff to review and process applications for individuals wanting to become a registered health care provider in Arizona, as specified in the new rules. Furthermore, the Department expects to incur minimal costs for office equipment, administrative support to add a computer database for applicants and registered health care providers to the current system, create a registered health care provider webpage, including updates and maintenance, and other miscellaneous costs for security, utilities, insurances, etc. since the Department already uses these items for other Department operations. The Department anticipates receiving a significant benefit from having rules that expand a client’s accessibility to health care and allows for a more convenient continuity of health care.

The new rules in Article 10 for out-of-state telehealth providers affect individuals who are licensed audiologists, hearing aid dispensers, midwives, radiologic technologists, SLPs, and SLPAs and wish to become a registered health care provider in Arizona and establish requirements a registered health care provider must comply with. As prescribed in R9-16-1006, which outlines the criteria for providing health care services through telehealth and requires a registered health care provider to hold a current and

valid health care provider professional license to practice in another state that is substantially similar to a license issued in Arizona for a minimum of one year, and comply with the laws of Arizona. If there are any restrictions or disciplinary actions initiated on the registered health care provider's license, the registered health care provider must notify the Department within five days.

According to R9-16-1002, an out-of-state health care provider may apply to register with the Department to become a registered health care provider and pay the \$100 registration fee. A registered health care provider can renew their registration annually under R9-16-1003, by attesting that the information on their registration is accurate or by updating the information on their registration accordingly. The rules prescribed in R9-13-1002 and R9-13-1003, align with the statutory requirements pursuant to A.R.S. 36-3606, which require the registered health care provider to submit information regarding the registered health care provider's appointed statutory agent in Arizona and professional liability insurance. The Department expects a registered health care provider to incur minimal costs for initial registration, obtaining an appointed statutory agent, and professional liability insurance, but receive a significant benefit from having rules that allow for the expansion of telehealth practice.

The Department anticipates that individuals who wish to become a registered health care provider will receive an increase in revenue for expanding services to clients located in Arizona while the registered health care provider is in another state, due to the new rules. The state of Arizona is known for accommodating a great number of snowbirds, the new rules allow clients to continue to see the same provider from their home state via telehealth rather than having to find another provider in Arizona. Continuing health care from the same provider benefits the client since the provider most likely knows their client's medical history and needs. In addition, this eliminates the additional administrative work of having to transfer medical records and reports to different offices. The Department believes the benefits related to telehealth services outweigh any potential costs associated with this rulemaking.

For audiologists affected by the rules, telehealth services allow for increased accessibility, which is estimated to be a significant benefit since more than half of all U.S. counties do not have audiologists. Many hearing aid brands come with accompanying smartphone apps, which allow for an audiologist or hearing aid dispenser to successfully program a client's hearing aids via the app, and monitor and provider services remotely. As for midwives, telehealth makes it possible for clients to continue childbirth preparation courses through phone calls to postnatal mothers on breastfeeding, cord care, and thermal care. Telehealth services have allowed midwives to provide remote services such as prenatal risk assessment, postpartum depression screening, childbirth education, substance use disorder treatment and recovery services for pregnant and parenting women, and wireless blood pressure and weight monitoring. Many providers reported that attendance at prenatal care visits has improved since the expansion of telehealth services at the start of the COVID-19 pandemic. Radiologic technologists will benefit from this telehealth rulemaking to provide follow-up care and notifications following any in-person medical testing.

Telehealth has made it possible for radiologic technologists to consult with a specialist – such as a neuroradiologist or a pediatric radiologist – for real-time consultation that’s streamlined and efficient for both parties and speeds up patient diagnosis, and the start of a treatment plan. SLPs and SLPA’s are expected to receive a benefit from having rules that support continuity of care via telehealth. Many clients seek an SLP or an SLPA to effectively receive treatment for communication issues such as stuttering, articulation, language, voice disorders, accent modification, etc. For most clients seeking regular care from an SLP or an SLPA, is imperative because if the client begins missing regular sessions, regression can happen quickly, endangering the goals of therapy and undermining the client’s motivation. Telehealth services for these clients will be a huge benefit to ensuring their treatment is continued to effectively.

Telehealth increases the flexibility of the registered health care provider and ability to administer services regardless of whether there are stay at home orders, severe weather, or other unforeseen circumstances. Health care practitioners and organizations who use telehealth services may see increases in revenue and cost savings. On average, telehealth services cost less than in-person health care visits. The national median cost of a virtual telehealth visit for a minor health issue is an estimated \$50.00, whereas a visit to the doctor’s office for a similar health issue could cost about \$85.00. For a visit to urgent care for that same minor issue, the average cost is estimated at \$130.00, and further, a visit to the emergency room would cost approximately \$740.00. Increasing telehealth service usage by health care providers can be a way of reaching patients who are unable to access care and potentially expanding the type of care a patient may receive. The Department estimates the benefit of the rulemaking to significantly benefit a registered health care provider, and the benefits related to telehealth services outweigh any potential costs associated with this rulemaking.

The economic impact of telehealth services is likely to spread throughout the community, cutting down on travel costs for clients and boosting revenues for other healthcare providers. Clients who may have a disability, financial challenges, and/or transportation difficulties are just a few examples of individuals who can now be serviced via telehealth and would not have been able to before. For individuals who consider Arizona their secondary home state, they can still vacation and/or live in Arizona for an extended part of the year while still seeking care for their primary home state.

The Department expects having the new requirements will increase access to health care for vulnerable populations and individuals who might have difficulty accessing care, such as individuals with limited mobility. Through technology, vital statistics of a client can be monitored remotely by the health care provider and if necessary, have that data transferred to another provider promptly. The Department believes that clients and the general public will receive a significant benefit from having rules that support increasing the number of registered health care providers in Arizona and expanding access to health care.

**10. A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:**

No changes were made between the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking.

**11. Agency's summary of the public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:**

During the public comment period for the Notice of Proposed Rulemaking, the Department received a comment from the Meredith Check, Manager of Government Relations and Public Policy at the American Society of Radiologic Technologists. No members of the public attended the oral proceeding on November 20, 2023, via teleconferencing, and no oral comments were provided.

Comment:

Does the Department envision a radiologic technologist being able to perform a medical imaging or radiation therapy procedure via telehealth (I.e. the Rad Tech is out of state but the patient and equipment is in-state)?

In the preliminary summary, it states that the radiologic technologist can provide notification and follow-up care, however it is the responsibility of the prescribing licensed practitioner and not the Rad Tech to provide that information to the patient. Could you please elaborate on the kind of follow up care the Department is expecting the Rad Tech to perform?

Additionally, the real-time consultation to specialists to expedite diagnosis and treatment plans, as mentioned in the preliminary summary, is typically licensed practitioner to licensed practitioner.

Does the Department envision these specialists to prescribe and supervise the medical imaging and radiation therapy procedures via telehealth (I.e. the Rad Tech is in Arizona with the patient and the specialist is out of state)?

Department response:

Hi Meredith,

Thank you for reaching out. Radiologic technologists are included in [Laws 2021, Ch. 320](#) for out-of-state telehealth providers. The rules and statutes ensure that radiologic technologists adhere to their scope of practice when engaging in telehealth. Below we have included the rules and statutes referencing the scope of practice for your review:

Pursuant to R9-16-1006(C)

A registered health care provider is subject to state laws and rules governing scope of practice and practice guidelines established in Arizona and in the state of licensure.

Therefore, if it is out-of-the scope of practice for a radiologic technologist to provide notification, follow-up care, and consultation with the patient, then the radiologic technologist is not permitted to do so.

Pursuant to R9-16-608(B)

An individual certified as a radiologic technologist shall follow the standards specified in the 2019 American Society of Radiologic Technologists Radiography Practice Standards,

incorporated by reference, on file with the Department, and including no future editions or amendments.

Attached are the 2019 American Society of Radiologic Technologists Radiography Practice Standards.

In addition, health care providers are limited in their scope of practice pursuant to:

[A.R.S § 36-3602\(F\)](#)

F. Services provided through telehealth are subject to this state's laws and rules governing the health care provider's scope of practice and the practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

[A.R.S. § 36-3603](#)

This article applies to the practice of telehealth within this state. This article does not expand, reduce or otherwise amend the health care provider licensing requirements of title 32.

[A.R.S. § 36-3606\(A\)\(5\)](#)

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

Additional Response from Commenter:

Meredith Check from the American Society of Radiologic Technologists followed up with a letterhead to the Department opposing the inclusion of radiologic technologists in out-of-state telehealth providers.

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

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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

A.R.S. § 36-3606 requires the Department to issue an out-of-state health care provider license and registration to individuals who meet the qualifications prescribed in statutes and rules adopted by the Department. Additionally, A.R.S. § 36-3606 provides the Department authority to deny, revoke, or suspend an applicant or registered health care provider's license. For this reason, the Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(2) and (3) that a general permit is not applicable.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more**

**stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

There are no federal rules applicable to the exact subject of the rule. However, similar to the new out-of-state telehealth rules, the Department of Health and Human Services issued an amendment to the Public Readiness and Preparedness (PREP) Act on December 3rd, 2020. Part of the amendment implements a nationwide change regarding licensure: any licensed healthcare provider who is permitted to order and administer a Covered Countermeasure in any one state may now order and administer that Covered Countermeasure in any other state via telehealth, even if the provider is not licensed in the other state (subject to compliance with any rules established by the practitioner's state of licensure). A provider may now provide qualifying COVID-19-related telehealth services to patients in multiple states without needing to confirm each state's laws regarding practice across state lines (some of which may require out-of-state practitioners to register or otherwise seek authorization from the state). The new out-of-state telehealth rules regulate licenses for medical radiologic technologists, midwives, and speech & hearing professionals, and allow for the expansion of telemedicine across state lines if the health care provider is registered with the Department. The Department is authorized to promulgate and implement rules according to A.R.S. §§ 36-3606 and 36-3608. The new rules related to out-of-state telehealth are not more stringent than federal law.

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

No business competitiveness analysis was submitted to the Department.

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

Not applicable

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not previously made as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING**

**ARTICLE 10. OUT-OF-STATE TELEHEALTH PROVIDERS**

Section

- R9-16-1001. Definitions
- R9-16-1002. Initial Application
- R9-16-1003. Renewal
- R9-16-1004. Time-frames
  - Table 10.1 Time-frames (in calendar days)
- R9-16-1005. Changes Affecting a Registration
- R9-16-1006. Providing Health Care Services Through Telehealth
- R9-16-1007. Enforcement

## ARTICLE 10. OUT-OF-STATE TELEHEALTH PROVIDERS

### **R9-16-1001. Definitions**

In addition to the definitions in A.R.S. § 36-3601, the following definitions apply in this Article unless otherwise stated:

1. “Applicant” means an individual who is licensed in another state and seeking the Department's approval of registration as a registered health care provider.
2. “Client” means an individual who is examined or treated by a registered health care provider.
3. “Department” means the same as in A.R.S. § 36-101.
4. “Health care decision maker” means an individual designated to make a medical decision on behalf of a client receiving telehealth services.
5. “Health care services” means assessment, diagnosis, consultation, or treatment, consistent with A.R.S. Title 32, Chapter 28; A.R.S. Title 36, Chapter 6, Article 7; or A.R.S. Title 36, Chapter 17, provided to a client.
6. “Informed consent” means documented verbal, electronic, or written permission, given by a client or the client’s health care decision maker, for the client to receive health care services from a registered health care provider according to A.R.S. Title 36, Chapter 36, and this Article.
7. “License” means a valid and current agency permit, certificate, approval, registration, or similar form of permission required by law that is issued by a state authorizing an individual to provide health care services consistent with:
  - a. A.R.S. Title 32, Chapter 28, for radiologic technology;
  - b. A.R.S. Title 36, Chapter 6, for licensed midwifery; or
  - c. A.R.S. Title 36, Chapter 17, for audiologists, hearing aid dispensers, speech-language pathologists, and speech-language pathologist assistants.
8. “Registered health care provider” means an individual who:
  - a. Resides and holds a current and valid license in another state, and
  - b. Has been approved by the Department to provide telehealth services in Arizona.
9. “Telehealth services” means health care services provided through telehealth.

### **R9-16-1002. Initial Application**

**A.** An applicant for initial registration to provide telehealth services in Arizona shall submit to the Department an application that contains:

1. The following information in a Department-provided format:
  - a. The applicant’s name, home address, telephone number, and e-mail address;
  - b. The applicant’s Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
  - c. The type of telehealth registration the applicant is requesting;
  - d. Information about the license held by the applicant, including the:

- i. State or jurisdiction that issued the license.
    - ii. The license number, and
    - iii. The license date of expiration;
  - e. The name of the applicant's professional liability insurance company, including whether the insurance policy covers claims occurring in Arizona;
  - f. The name, address, telephone number, e-mail address, and, if applicable, business name of the applicant's statutory agent in Arizona;
  - g. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction and, if so:
    - i. The date of the conviction,
    - ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the applicant was convicted, and
    - iv. The disposition of the case;
  - h. Whether the applicant has had a license revoked or suspended;
  - i. Whether the applicant has had a disciplinary action taken against the applicant's license by any state or jurisdiction and, if so:
    - i. The date of the disciplinary action,
    - ii. The state or jurisdiction of the disciplinary action, and
    - iii. An explanation of the disciplinary action;
  - j. Whether the applicant is currently ineligible for licensure in any state because of a revocation or suspension and, if so, documentation that includes:
    - i. The date of ineligibility for licensure,
    - ii. The state or jurisdiction of the ineligibility for licensure, and
    - iv. An explanation of the ineligibility for licensure;
  - k. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-1006;
  - l. An attestation that the applicant authorizes the Department to verify all information provided in the application;
  - m. An attestation that the applicant agrees to comply with the requirements in this Article and A.R.S. § 36-3606;
  - n. An attestation that the information submitted as part of the application is true and accurate; and
  - o. The applicant's signature and date of signature;
- 2. A copy of the license for each jurisdiction where the applicant holds or held a license;
  - 3. A copy of the applicant's professional liability insurance policy, including:

- a. The name of the insurance provider,
- b. Policy number,
- c. Coverage for telehealth services, and
- d. Policy limits and amounts;
- 4. Documentation that complies with A.R.S. § 41-1080;
- 5. If applicable, documentation about each conviction of a felony or misdemeanor supporting the information specified in subsection (A)(1)(g);
- 6. If applicable, documentation about each disciplinary action specified in subsection (A)(1)(i), including any legal order or settlement agreement related to the action taken;
- 7. If applicable, documentation about each revocation or suspension specified in subsection (A)(1)(j), including any legal order or settlement agreement; and
- 8. A nonrefundable fee of \$100.

**B.** The Department shall review the application and required documentation for initial registration as a registered health care provider according to R9-16-1006 and Table 10.1.

**C.** The Department shall approve or deny an application for registration according to R9-16-1002.

**R9-16-1003. Renewal**

**A.** At least 30 calendar days before the expiration date of a registered health care provider’s registration, the registered health care provider shall submit to the Department:

- 1. The following information in a Department-provided format:
  - a. The registered health care provider’s name, home address, telephone number, and e-mail address;
  - b. The registered health care provider’s registration number and date of expiration;
  - c. The name of the registered health care provider’s professional liability insurance company, including whether the insurance policy covers claims occurring in Arizona;
  - d. The name, address, telephone number, e-mail address, and if applicable, a business name of the registered health care provider’s statutory agent in Arizona;
  - e. Since the previous registration application, whether the applicant has:
    - i. Been convicted of a felony or a misdemeanor in this or another state,
    - ii. Had a license revoked or suspended in this or another state, or
    - iii. Had a disciplinary action taken against the applicant’s license by any state or jurisdiction;
  - f. Whether the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension;
  - g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-1006;



information or documentation needed to complete the application.

b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.

c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.

3. If the Department issues a registration during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

**C.** For a registration or approval issued by the Department under this Article, Table 10.1 specifies the substantive review time-frame, which begins on the date the Department sends a written notice of administrative completeness.

1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the application.

2. During the substantive review time-frame:

a. The Department may make one comprehensive written request for additional information or documentation; and

b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.

3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.

4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the registration or approval.

**D.** The Department shall issue a registration:

1. According to Table 10.1, after receiving the registration fee, and

2. From the effective date, the registration is valid for one year.

**E.** An applicant who is denied a registration may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Table 10.1 Time-frames (in calendar days)**

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Review</u>	<u>Time to Respond to Deficiency Notice</u>	<u>Substantive Review</u>
<u>Initial Application</u>	<u>A.R.S. § 36-3606</u>	<u>60</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>Registration Renewal</u>	<u>A.R.S. § 36-3606</u>	<u>60</u>	<u>30</u>	<u>30</u>	<u>30</u>

**R9-16-1005. Changes Affecting a Registration**

Within 30 calendar days after the effective date of a change, a registered health care provider shall submit to the Department:

1. The following information:
  - a. The registered health care provider’s name, address, telephone number, and e-mail address; and
  - b. The new name, address, telephone number, or e-mail address, if applicable;
2. If the registered health care provider’s name has changed, a copy of one of the following with the registered health care provider’s new name:
  - a. Marriage certificate,
  - b. Divorce decree, or
  - c. Other legal document establishing the registered health care provider’s new name.
3. If the registered health care provider’s professional liability insurance policy has changed, a copy of the registered health care provider’s new professional liability insurance policy; and
4. If the statutory agent has changed, the name, address, telephone number, e-mail address, and, if applicable, business name of the statutory agent.

**R9-16-1006. Providing Health Care Services Through Telehealth**

- A. Except as provided in A.R.S. § 36-3606(E), an individual wishing to provide health care services through telehealth under A.R.S. Title 36, Chapter 36, and this Article shall:
  1. Hold a current and valid license to practice in another state that is substantially similar to a license issued in Arizona for a minimum of one year; and
  2. Be registered according to A.R.S. Title 36, Chapter 36, Article 1 and this Article prior to providing telehealth services.
- B. A registered health care provider shall:

1. Comply with the laws and rules of this state, including the requirements for medical records as defined in A.R.S. §§ 12-2291 and 32-3211;
2. Notify the Department within five days after any restriction placed on a registered health care provider's license or any disciplinary action initiated or imposed by any jurisdiction or state;
3. Ensure the registered health care provider's professional liability insurance policy includes coverage for telehealth services provided to clients in Arizona;
4. Maintain a statutory agent for service of process in this state;
5. Consent to the Department's jurisdiction for any disciplinary action or legal proceeding related to the registered health care provider's acts or omission under A.R.S. Title 36, Chapter 36, Article 1, and this Article;
6. Obtain a client's informed consent prior to:
  - a. Providing a telehealth service, or
  - b. Dissemination of images or information identifiable to a client for research or educational purposes; and
7. Submit an annual report, in a Department provided-format, that includes:
  - a. The number of clients served in Arizona, and
  - b. The number and type of encounters that occurred during the report year.

**C.** A registered health care provider is subject to state laws and rules governing scope of practice and practice guidelines established in Arizona and in the state of licensure.

**D.** A registered health care provider may not open an office in Arizona or provide in-person health care services to a client in Arizona without first obtaining an Arizona license applicable to the registered health care provider.

**R9-16-1007. Enforcement**

**A.** The Department may deny, suspend, or revoke a registered health care provider's registration.

**B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to the public health and safety,
4. The number of violations,
5. The number of clients affected by the violations,
6. The degree of harm to the clients,
7. A pattern of noncompliance as specified in A.R.S. § 36-3606(C), and
8. Any mitigating or aggravating circumstances.

**C.** Disciplinary action taken by the Department according to A.R.S. § 36-3606(C) shall be reported to the:

1. National Practitioner Database Bank, and

2. Licensing authority in the state and all states where the registered health care provider possesses a professional license.

**D.** A registered health care provider may appeal an enforcement action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

**TITLE 9. HEALTH SERVICES**

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES -  
OCCUPATIONAL LICENSING**

**ARTICLE 10. OUT-OF-STATE TELEHEALTH PROVIDERS**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**December 2023**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 16. DEPARTMENT OF HEALTH PROGRAM SERVICES–**

**OCCUPATIONAL LICENSING**

**ARTICLE 10. OUT-OF-STATE TELEHEALTH PROVIDERS**

**1. An identification of the rulemaking:**

Arizona Revised Statutes (A.R.S.) §§ 36-3606 and 36-3608, as added by Laws 2021, Ch. 320, requires the Arizona Department of Health Services (Department) to allow a health care provider who is not licensed in Arizona to provide telehealth services to a client located in Arizona if the health care provider registers with the Department and pays a registration fee. The Department plans to adopt rules to implement Laws 2021, Ch. 320 in Arizona Administrative Code, Title 9, Chapter 16, which contains requirements for individuals in occupations regulated by the Department. The rulemaking is necessary to allow for the expansion of telemedicine in Arizona and provide greater opportunities for accessible medical services while protecting public health. Telehealth expands access to medical services for low-income families and those living in rural areas, protect vulnerable populations, and allows snowbirds visiting Arizona to receive telemedicine from their home state. During the beginning phases of the COVID-19 pandemic, multiple executive orders were issued by the governor, such as Executive Orders 2020-19, 2020-29, and 2020-15, which temporarily allowed and extended telehealth provisions. During the first year of the COVID-19 pandemic, telehealth was critical for providing services to clients and patients. The use of telehealth has provided a way for physicians to provide care while keeping patients safe in their homes. These services also protected health care staff and safeguarded resources such as personal protective equipment. Laws 2021, Ch. 320, permanently allows for the use of video or audio technology for health care providers to provide telehealth services, which provide greater opportunities for accessible medical services while protecting public health. The new rules and regulations, which were initiated by legislation, are needed to aid health care providers in their abilities to continue providing adequate health care and for the increased use of telehealth services in health care throughout Arizona.

Pursuant to the rulemaking moratorium established by Executive Order 2021-02, the Department received an exception approval on June 21, 2022, to promulgate rules in 9 A.A.C. 16, Article 10 for Out-of-State Telehealth Providers to be consistent with the statutory authority. The Department anticipates that the new rules may increase the regulatory burden and impose a cost on some affected persons.

**2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules**

- a. The Department
- b. Audiologists, hearing aid dispensers, midwives, radiologic technologists, speech-language pathologists, and speech-language pathologist assistants who are licensed out-of-state and wish to become a registered health care provider in Arizona.
- c. Clients (seeking healthcare via telehealth) and the general public

**3. Cost/Benefit Analysis**

This analysis covers the cost and benefit associated with Laws 2021, Ch. 320, which allows a health care provider who is not licensed in Arizona to provide telehealth services to a client located in Arizona. No new full-time employees are required due to this rulemaking. This rulemaking establishes licensing fees authorized by A.R.S. § 36-3606 and fees collected are deposited in the health services licensing fund. The annual cost and revenue changes are designated as minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the sections immediately following.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
<b>A. State and Local Government Agencies</b>			
The Department	Requires technical resources and personnel to promulgate new rules	Minimal	Significant
	Requires administrative support to update the website database, forms, and other administrative documents	Minimal	Significant
	Requires licensing staff to review, track, and process applications for an individual applying for registration with the Department to provide telehealth services	Minimal	Significant

	Establish a new program fee for a registered health care provider to register with the Department	Minimal	Significant
	Establish criteria for granting, denying, suspending, and revoking a certificate	Minimal	Significant
	Requires staffing to implement enforcement procedures and disciplinary action to a registered health care provider when appropriate	Minimal	Significant
<b>B. Privately Owned Businesses</b>			
Audiologists, hearing aid dispensers, midwives, radiologic technologists, and speech-language pathologists, and speech-language pathologist assistants who are licensed out-of-state and wish to become a registered health care provider in Arizona.	Requires initial registration and to annually renew the registration with the Department before practicing telemedicine with clients in Arizona	Minimal	Significant
	Establishes a new program fee to register with the Department as a registered health care provider	Minimal	None
	Requires the health care provider's professional license to practice in another state must be substantially similar to a license issued in Arizona	Substantial	Significant
	Requires the registered health care provider to report to the Department if any restrictions have been placed on the registered health care provider's license	Minimal	Significant
	Requires the registered health care provider to maintain a professional	Minimal	Significant

	liability insurance policy which includes coverage for telehealth services		
	Requires the registered health care provider to designate a duly appointed statutory agent	Minimal	Significant
	Requires annual reporting in a Department-provided format of the number of clients served via telehealth in Arizona	Minimal	None
<b>C. Consumers</b>			
Clients (seeking healthcare) and the general public	Increases and improves accessibility and continuity of healthcare	Substantial	Significant
	Allows individuals who temporarily come to Arizona to continue appointments with the health care provider in their home state	Substantial	Significant

**The Department**

The Department currently provides licenses for audiologists, hearing aid dispensers, midwives, radiologic technologists, and speech-language pathologists (SLP), and speech-language pathologist assistants (SLPA). With the expansion of telehealth in Arizona, health care providers with out-of-state licenses, under occupations licensed by the Department, may apply to become a registered health care provider with the Department to provide services to clients in Arizona. Pursuant to A.R.S. §§ 36-3606 and 36-3608, as added by Laws 2021, Ch. 320, provides authority to the Department to promulgate new rules in Title 9, Chapter 16, to implement rules and regulations for out-of-state telehealth providers. The Department has drafted new rules for regulating out-of-state telehealth providers in 9 A.A.C. 16, Article 10. Article 10 contains seven new Sections and one new Table; Definitions (R9-16-1001), Initial Application (R9-16-1002), Renewal (R9-16-1003), Time-frames (R9-16-1004), Time-frames in Calendar Days (Table 10.1), Changes Affecting a Registration (R9-16-1005), Providing Health Care Services Through Telehealth (R9-16-1006), and Enforcement (R9-16-1007). As authorized by A.R.S. § 36-3606, the rules establish a new program fee of \$100, which is a one-time-only registration fee for

out-of-state individuals who register with the Department to provide telehealth services to clients in Arizona. For this one-time fee, the Department is required to evaluate the information submitted by the out-of-state healthcare provider, supervise compliance for as long as the healthcare provider chooses to provide telehealth services to Arizona residents and receive and evaluate annual updates from the healthcare provider. The Department in this rulemaking supports the registration of a registered health care provider in a manner that is the least burdensome for applicants and increases the number of health care providers available for services in Arizona.

Since the Department already licenses, audiologists, hearing aid dispensers, midwives, radiologic technologists, SLPs, and SLPAs, the cost of technological resources to allow an out-of-state provider to register online with the Department is minimal. An out-of-state health care provider can simply apply for registration in an electronic system, already utilized by the Department. Department staff and administration will need to process initial applications (R9-16-1002), as well as renewal applications (R9-16-1003), and respond to notices of a change affecting an individual's registration (R9-16-1005). R9-16-1004 and Table 10.1 specifies the administrative completeness review time-frame for registration issued by the Department. The administrative completeness review time-frame begins the date the Department receives an application required in this Article. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied the application. The Department anticipates that these changes may provide a minimal-to-moderate benefit to the Department.

Additional Department resources may be used to apply enforcement action to deny, suspend, or revoke a registered health care provider's registration when appropriate, as described in R9-16-1007. As specified in the rule and pursuant to A.R.S. § 36-3606(C), the Department shall consider the type of violation, severity of the violation, the danger to public health and safety, the number of violations, the number of clients affected by the violations, the degree of harm to the clients, a pattern of noncompliance, and any mitigating or aggravating circumstances. Department resources, staff, and administration will be required to implement R9-16-1007, to enforce the rules and research the circumstances when enforcement action shall be applied to a registered health care provider. The Department anticipates to incur minimal costs related to enforcement, but also receive up to moderate benefits.

No new full-time employees are necessary due to this rulemaking. The registration and licensure process for a registered health care provider is similar to the already established licensure process, therefore, the costs for the Department to implement the new Out-of-State Telehealth rules are expected to be minimal. The Department anticipates to incur minimal costs for a rule analyst and program staff to draft new rules and communicate with stakeholders. Furthermore, the Department expects to incur minimal costs for office equipment, administrative support to update a computer

database for applicants and a registered health care provider to the current system, including updates and maintenance, and other miscellaneous costs for security, utilities, insurance, etc. The Department expects that the Article 10 rules are important and necessary to assist in increasing and expanding the use of telehealth services and access to health care for all Arizona communities. The Department also expects that the benefit of having the rules will be significant and responsive to the public's need for having telehealth services available.

With the expansion of telehealth in Arizona, the new rules are expected to enhance follow-up care, improve client access to services, and increase the accuracy and quality of medical records. Regular check-ins with a health care provider are important and help prevent a client's risk of disease or infection, especially life-threatening health conditions. By getting the proper health services, screenings, and treatment, clients are taking important steps towards living a longer, healthier life. The Department expects to receive a significant benefit for registering an out-of-state health care provider to provide services to clients in Arizona communities.

**Audiologists, hearing aid dispensers, midwives, radiologic technologists, and speech-language pathologists, and speech-language pathologist assistants who are licensed out-of-state and wish to become a registered health care provider in Arizona.**

Telemedicine enables the use of technology to deliver health care, health information, or health education at a distance between a client and their health care provider. The use of telemedicine has been shown to allow for better long-term care management and patient satisfaction; it also offers a new means to locate health information, and communicate with health care providers, thereby increasing convenience for clients, and reducing the amount of potential travel required for both the health care provider and the client.

The Bureau of Special Licensing issues licenses for medical radiologic technologists, midwives, and speech & hearing professionals. R9-16-1001 specifies terms and definitions used throughout the rules, and identifies who can apply to become a registered health care provider, which includes individuals who hold a valid and current license issued by a state authorizing the individual to provide health care services consistent with; A.R.S. Title 32, Chapter 28, for radiologic technology; A.R.S. Title 36, Chapter 6, for licensed midwifery; or A.R.S. Title 36, Chapter 17, for audiologists, hearing aid dispensers, SLPs, and SLPAs.

A registered health care provider must comply with the new requirements implemented in Article 10. Providing health care services through telehealth as prescribed in R9-16-1006, requires an individual licensed out-of-state wishing to deliver telehealth services in Arizona to hold a current and valid health care provider professional license to practice in another state that is substantially similar to a license issued in Arizona for a minimum of one year. R9-16-1006 also requires a registered health care provider to comply with the laws and rules of Arizona, including the requirements for medical records

as defined in A.R.S. §§ 12-2291 and 32-3211. In addition to the requirements regulated in R9-16-1006, the registered health care provider must notify the Department within five days if there are any restrictions or disciplinary actions initiated on the registered health care provider's license. The requirements as prescribed in the rules for a registered health care provider are minimum requirements authorized by statute. In addition, the requirements are similar to general requirements that any health care provider must follow. Therefore, the Department expects a registered health care provider to incur up to minimal costs, if any, to comply with the requirements as stated above.

According to R9-16-1002, an out-of-state health care provider may apply for an initial application and register with the Department to become a registered health care provider and provide telehealth services to clients in Arizona. As authorized by A.R.S. § 36-3606, the applicant must pay the one-time-only fee of \$100, as prescribed in R9-16-1002 for the initial registration. The required fee for an individual to register as a health care provider in Arizona is minimal and nonrefundable. According to R9-13-1003, on an annual basis, a registered health care provider may renew their registration through the same electronic application system by attesting that the information is the same or by updating their information accordingly. Based on the legislature's cost-benefit determination and the limited authority provided under A.R.S. § 36-3606, the benefits of the rule outweigh the costs.

The rules prescribed in R9-13-1002 and R9-13-1003, align with the statutory requirements, pursuant to A.R.S. 36-3606, which require a registered health care provider to submit a notice in a Department-provided format regarding the registered health care providers appointed statutory agent in Arizona, as well as professional liability insurance. Minimal costs may be incurred by the registered health care provider for obtaining a duly appointed statutory agent and professional liability insurance. Costs may vary depending on the statutory agent that the registered health care provider selects and the type of professional liability insurance coverage selected. On average, the cost of hiring a statutory agent service is typically around \$50 to \$300 per year. General liability insurance costs for health care professionals are typically \$30 per month or \$350 per year. The Department estimates that associated costs incurred by the registered health care provider far out way the benefits of this rulemaking.

Many rural areas lack audiologists, in fact, more than half of all U.S. counties do not have any audiologists. Studies on the accessibility of hearing-related health services show that rural residents average about an hour and a half of travel time to an appointment with an audiologist, and in many cases, delaying the time to have hearing aids or cochlear implants. Some cities and towns in Arizona are near other state line borders, for rural individuals who need health care, telehealth expands the options to see other providers outside of Arizona. Another great benefit of the convenience of telehealth services for audiologists and hearing aid dispensers is that many hearing aid brands come with accompanying smartphone applications. An audiologist or hearing aid dispenser, with today's technology, can remotely program a person's hearing aids via the application, permitting programming to occur without having

the patient come into an office. This can be very useful if a client needs their hearing aid settings customized, adjusted, or changed. Receiving audiological health care via telehealth could particularly benefit older adults with hearing loss who are homebound or in a nursing home. On average, a new hearing aid user needs to see an audiologist about three times to get the proper hearing aid adjustments and fitting. Most nursing homes do not tend to have on-site audiologists; therefore, it is the caregiver's responsibility to transport patients back and forth to appointments. Allowing telehealth services helps solve the barriers and issues revolving around transportation issues, especially for someone with a disability.

For midwives, as defined in A.R.S. § 36-751, telehealth makes it possible for clients to continue childbirth preparation courses for postnatal mothers on breastfeeding, cord care, and thermal care. This has helped babies survive and continue healthy development even though, mothers may not have been able to access a health care facility in person for postnatal care. Maternal telehealth services have allowed midwives to provide other remote services such as prenatal risk assessment and postpartum depression screening, childbirth education, and substance use disorder treatment and recovery services for pregnant and parenting women. Many midwives have invested in updating digital products that can facilitate access to telehealth, distribute health education messages via text message, send appointment reminders and referrals, and provide wireless blood pressure and weight monitoring to clients. Aside from lab tests and certain types of monitoring, perinatal care lends itself to virtual delivery, since conversations, education, support, and question-and-answer sessions can occur via telehealth. Many providers reported that attendance at prenatal care visits has improved since the COVID-19 pandemic and with the expansion of telehealth services. Due to the increased convenience of telehealth, there is an elimination of barriers, that make it difficult for women to attend regular prenatal appointments, such as lack of transportation and/or affordable child care.

Radiologic technologists, as defined in A.R.S. § 32-2801, benefit from this rulemaking by being able to touch base with their clients via telehealth. While medical scans may be required to happen in-person, follow-up care and notification can happen through telehealth. Clients need results from X-rays, MRIs, CT scans, and other diagnostic imaging services as quickly as possible, which requires the trained eye of the radiologist to accomplish. Telemedicine for radiology improves the patient experience and heightens patient care by making it possible for radiologic technologists to provide services without being in the patient's location. It also makes it possible for radiologic technologists to consult with a specialist, such as a neuroradiologist or a pediatric radiologist, for real-time consultation that's streamlined and efficient for both parties, speeds up patient diagnosis, and the start of a treatment plan. Individuals who are traveling to Arizona after receiving a radiological scan in another state are now able to continue on with their travel plans and can continue seeking care. Clients who need to consult with a

radiologic technologist after a scan or X-ray can also do so from their remote locations without the need to travel to the provider's office location.

SLPs and SLPAs, as defined in A.R.S. § 36-1901, benefit by having new rules supporting the use of telehealth, reduce a public health burden, and allow for the continuity of care. Many clients seek a SLP or SLPA for on-going and sometimes long-term treatment, to effectively treat communication issues such as stuttering, articulation, language, voice disorders, accent modification, etc. Many populations who seek care from a SLP or SLPA are at higher risk for more serious infections due to having somewhat compromised immune systems. In situations during a global pandemic such as COVID-19, it is important to take significant precautions while also being able to provide regular health services. SLPs and SLPAs know that if their clients start to miss regular sessions, regression can happen quickly, endangering the goals of therapy and undermining the client's motivation. When offering virtual telehealth services, it is possible for current clients to continue care and expands the availability for SLP and SLPA's to reach new clients. Telehealth gives SLPs and SLPAs the opportunity to provide health care to more clients and in some cases, potentially see an increase in revenue.

In general, health care professionals who use telehealth services may see increases in revenue and cost savings. Increasing the use of telehealth services can be a way of reaching clients who are unable to access care, and potentially expand the type of care a client may receive. With the expansion of telehealth and with the great number of snowbirds that Arizona accommodates annually, clients can continue to seek care from a provider in their home state, via telehealth, rather than having to find another provider in Arizona. Continuing of health care from the same provider may benefit both the client and provider. For example, when a health care provider sees the same client over time, there is typically a well-established provider-client relationship built, and the health care provider may have a better sense of the patient's values and preferences, as well as complexities around the treatment plan. In addition, this eliminates the administrative work of having to transfer medical records and reports to different offices, as well as gathering insurance information.

Overall, there are several positive factors for expanding the use of telemedicine for out-of-state health care providers who registered with the Department. The economic impact of telehealth services is likely to spread throughout the community, cut down on travel costs for clients, and boost revenues for healthcare providers. Health care providers, utilizing telehealth services can decrease the risk of exposure to illness, a concern that is even more dire during a pandemic, such as COVID-19, or even during the flu season. In addition, health care providers have an opportunity to grow and expand their practices by using telehealth services to reach new patients across state lines. The Department anticipates that out-of-state registered health care providers will have an increase in revenue for expanding services to clients located in Arizona, due to the new rules. Telehealth services are expected to provide an overwhelmingly positive client benefit and increase productivity for many health care

services. When the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing registration of out-of-state health care providers to provide services via telehealth outweigh the costs to the state. The legislature established the paperwork cost when it specified the content of an application that must be submitted and established multiple compliance requirements at A.R.S. § 36-3606(A)(2) through (A)(9), (B), and (C). In establishing these paperwork and compliance requirements, the legislature determined the requirements imposed the least burden and costs on out-of-state providers practicing medicine by telehealth necessary to achieve the underlying regulatory objective. The Department expects that the rules may impose minimal costs on a registered health care provider but a significant benefit.

### **Clients (seeking healthcare) and the general public**

Telehealth services have expanded access to health care that the average consumer would not typically utilize if they were required to have an in-person visit. The expanded use of telehealth services has demonstrated the critical role technology can play in improving health equity. No one should have to go without care when a video or phone conversation with a health care provider could mean quicker, safer medical attention. Telehealth potentially increases the availability of a registered health care provider to administer services regardless of whether there are stay at home orders, travel conflicts, or other unforeseen circumstances. Maintaining continuity of care to the extent possible can avoid additional negative consequences from delayed preventive, chronic, or routine care. Remote access to health care may increase participation for clients who are medically or socially vulnerable, or who do not have readily access to a health care provider. Remote access can also help preserve the client-provider relationship at times when an in-person visit is not practical or feasible.

Clients who may have a disability, financial challenges, and/or transportation difficulties are also individuals who can now utilize telehealth services that may have not been able to receive services before. Allowing out-of-state health care providers to service Arizonans gives clients more options for health care. For individuals who consider Arizona their secondary home state, they can still vacation and/or live in Arizona for an extended part of the year while still seeking care for their primary home state. In addition, telehealth can act as a gatekeeper for more expensive services. Before traveling to the nearest physician for services, a registered health care provider can recommend the best course of action, depending on the client's symptoms, via telehealth. The increased use of telehealth services has the potential to help clients save on health care costs.

On average, telehealth services cost less than in-person health care visits. The national median cost of a virtual telehealth visit for a minor health issue is an estimated \$50.00. In contrast, the average cost of a visit to the doctor's office for a similar health issue is about \$85.00. For a visit to urgent care for that same minor issue, the average cost is estimated \$130.00, and further, a visit to the emergency

room costs approximately \$740.00<sup>1</sup>. Although there are indicators that telehealth services can save consumers money, it remains unclear whether such cost-savings will be significant in the long term. The savings can be significant for individuals who have to pay the full cost before reaching the insurance deductible. Many insurance payers and health care provider professional associations have supported the transition to telehealth services during the COVID-19 pandemic. The Centers for Medicare & Medicaid Services issued multiple waivers providing flexibility (e.g., geographic location, type of health site) during the COVID-19 pandemic and granting payment parity between telehealth and in-person clinical care for Medicare. Overall, clients may be able to save money by using telehealth services, a particularly important consideration for individuals who may not have access to health care due to financial circumstances.

As previously stated, telehealth services can lead to increased access to health care, especially for vulnerable populations and individuals who might have difficulty accessing care, such as people with limited mobility. Improved technology has made telehealth easier, even for clients who don't consider themselves computer savvy. Through technology such as remote monitoring, vital statistics of a client can be monitored by the health care provider and if necessary, have that data transferred to another provider in a timely manner. In addition, clients can use telehealth services to discuss advance care planning with their provider. For clients who primarily reside in a different state and are visiting Arizona for an extended period of time, clients will now have the ability to plan for long-term continuity of treatment with the same provider. If a client is a resident of a long-term care facility, the client may be able to utilize telehealth services to receive non-emergent care more conveniently. With telehealth, clients who are sick do not have to drive to the doctor's office or clinic, park, walk or sit in a waiting room. Instead, clients may see the health care provider from the comfort of the client's home. In addition, telemedicine can be easier to fit into a busy schedule, clients may not even need to take leave time from work or arrange for child care. The expansion of telehealth allows for clients who may not have the financial or physical means to leave their homes to be seen by a health care provider. The Department believes that clients and the general public will receive a significant benefit from having rules that support increasing the number of registered health care providers in Arizona and allowing more options for clients to receive health care. Clients and the general public are not expected to incur any costs associated with the new rules but perhaps save on costs when seeing a healthcare provider via telehealth.

**4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking**

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<sup>1</sup> Lankford, K. "4 Ways Telehealth Can Save You Money." U.S. News, April 6, 2020.  
<https://money.usnews.com/money/personal-finance/family-finance/articles/how-telemedicine-can-save-you-money>.

The Department does not expect the rules will have a negative impact on employment for private and public businesses, agencies, and political subdivisions. Rather, the Department is optimistic that employment and revenue will increase the demand for more registered health care providers, as more individuals may seek health care via telemedicine.

**5. A statement of the probable impact of the rules on small business**

**a. Identification of the small businesses subject to the rules**

Small businesses affected by the rulemaking may include service providers and licensed out-of-state audiologists, hearing aid dispensers, midwives, radiologic technologists, SLPs, or SLPAs who are self-employed and register with the Department as a registered health care provider to provide telehealth services to Arizonians.

**b. The administrative and other costs required for compliance with the rules**

A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in Paragraph 3. The administrative and other costs for a registered health care provider are expected to be minimal for having health care providers register with the Department for a fee.

**c. A description of the methods that the agency may use to reduce the impact on small businesses**

The Department knows of no other methods to further reduce the impact on small businesses.

**d. The probable costs and benefits to private persons and consumers who are directly affected by the rules**

A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis Paragraph 3.

**6. A statement of the probable effect on state revenues**

The funds generated through registered out-of-state telehealth provider fees are collected and deposited in the health services licensing fund. The Department expects the rules to contribute a minimal amount of funds to state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking**

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

**8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data**

The financial data used to develop this document was obtained, as cited, from the Department's licensing database and financial records and projections, not from any outside data. Information about

the costs related to health care appointments was obtained from published research and review articles. As such, the Department believes the data is acceptable.

## **Out-of-State Telehealth Provider Statutory Authority**

### **36-104. Powers and duties**

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall

prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

**36-136. Powers and duties of director; compensation of personnel; rules; definitions**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign

substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained

at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of

this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

### **36-3606. [Interstate telehealth services; registration; requirements; venue; exceptions](#)**

A. A health care provider who is not licensed in this state may provide telehealth services to a person located in this state if the health care provider complies with all of the following:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

(a) The health care provider's name.

(b) Proof of the health care provider's professional licensure, including all United States jurisdictions in which the provider is licensed and the license numbers. Verification of licensure in another state shall be made through information obtained from the applicable regulatory board's website.

(c) The health care provider's address, email address and telephone number, including information if the provider needs to be contacted urgently.

(d) Evidence of professional liability insurance coverage.

(e) Designation of a duly appointed statutory agent for service of process in this state.

2. Before prescribing a controlled substance to a patient in this state, registers with the controlled substances prescription monitoring program established pursuant to chapter 28 of this title.

3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.

4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in this state to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory board or agency registering the health care provider may use the national practitioner databank to verify the information submitted pursuant to this paragraph.

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

6. Complies with all existing requirements of this state and any other state in which the health care provider is licensed regarding maintaining professional liability insurance, including coverage for telehealth services provided in this state.

7. Consents to this state's jurisdiction for any disciplinary action or legal proceeding related to the health care provider's acts or omissions under this article.

8. Follows this state's standards of care for that particular licensed health profession.

9. Annually updates the health care provider's registration for accuracy and submits to the applicable health care provider regulatory board or agency a report with the number of patients the provider served in this state and the total number and type of encounters in this state for the preceding year.

B. A health care provider who is registered pursuant to this section may not:

1. Open an office in this state, except as part of a multistate provider group that includes at least one health care provider who is licensed in this state through the applicable health care provider regulatory board or agency.

2. Provide in-person health care services to persons located in this state without first obtaining a license through the applicable health care provider regulatory board or agency.

C. A health care provider who fails to comply with the applicable laws and rules of this state is subject to investigation and both nondisciplinary and disciplinary action by the applicable health care provider regulatory board or agency in this state. For the purposes of disciplinary action by the applicable health care provider regulatory board or agency in this state, all statutory authority regarding investigating, rehabilitating and educating health care providers may be used. If a health

care provider fails to comply with the applicable laws and rules of this state, the applicable health care provider regulatory board or agency in this state may revoke or prohibit the health care provider's privileges in this state, report the action to the national practitioner database and refer the matter to the licensing authority in the state or states where the health care provider possesses a professional license. In any matter or proceeding arising from such a referral, the applicable health care provider regulatory board or agency in this state may share any related disciplinary and investigative information in its possession with another state licensing board.

D. The venue for any civil or criminal action arising from a violation of this section is the patient's county of residence in this state.

E. A health care provider who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in this state is not subject to the registration requirements of this section if either of the following applies:

1. The services are provided under one of the following circumstances:

(a) In response to an emergency medication condition.

(b) In consultation with a health care provider who is licensed in this state and who has the ultimate authority over the patient's diagnosis and treatment.

(c) To provide after-care specifically related to a medical procedure that was delivered in person in another state.

(d) To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.

2. The health care provider provides fewer than ten telehealth encounters in a calendar year.

[36-3608. Health care provider regulatory boards and agencies; out-of-state health care providers; reports](#)

(Rpld. 1/1/26)

Beginning October 1, 2021 and on or before the first of each month thereafter, each health care provider regulatory board or agency shall submit to the telehealth advisory committee on telehealth best practices established by section 36-3607 a report identifying the number and type of out-of-state health care providers who have applied for registration pursuant to section 36-3606 and the number and type of out-of-state health care providers whose registration pursuant to section 36-3606 has been approved.



## American Society of Radiologic Technologists

Stacie Gravito  
Interim Office Chief  
Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18<sup>th</sup> Avenue, Suite 200  
Phoenix, AZ 85007  
[Stacie.Gravito@azdhs.gov](mailto:Stacie.Gravito@azdhs.gov)

November 16, 2023

Re: 29 A.A.R. 2348

Dear Ms. Gravito,

The American Society of Radiologic Technologists represents more than 156,000 medical imaging technologists and radiation therapists across the nation, including 2,808 medical imaging professionals in Arizona. Our main mission as an organization is to advocate for patient safety by ensuring that only technologists who have achieved nationally recognized standards in education and clinical competencies are performing medical imaging and radiation therapy procedures.

**With that mission in mind, ASRT opposes the inclusion of radiologic technologists under the proposed out-of-state telehealth providers under R9-16-1001. Definitions.** ASRT recommends striking licensed radiologic technologists from the listed out-of-state telehealth providers.

Radiologic technologists provide hands-on patient care. While scopes of practices evolve over time, the current proposed rule does not draw enough clear distinctions between what is within the scope of practice for medical imaging and radiation therapy professionals and what is not. By including them, Arizona will cause significant confusion regarding the rules surrounding out-of-state telehealth in the medical imaging and radiation therapy field while disregarding Arizona's patients' safety. Because it is unclear what kind of procedures the Arizona Department of Health envisions radiologic technologists would perform via telehealth, including the profession in this proposed telehealth regulation leaves the door open for inappropriate practice or remote supervision of unlicensed technologists.

ASRT appreciates Arizona's commitment to high quality care, and we must urge the Department of Health to uphold the spirit of the current licensing standards and exclude radiologic technologists from this proposed telehealth regulation.

ASRT appreciates Arizona's commitment to providing patients' access to health care services provided by appropriately educated and clinically trained technologists and; and looks forward to working with you in the future to achieve this goal. Please feel free to contact me at [mcheck@asrt.org](mailto:mcheck@asrt.org) or 800-444-2778; Ext 1314 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "M Check". The signature is written in a cursive style with a large, stylized initial "M".

Meredith Check, MPP  
Manager of Government Relations and Public Policy  
American Society of Radiologic Technologists



Lucinda Feeley &lt; lucinda.feeley@azdhs.gov &gt;

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**Fwd: Clarification on Proposed Rulemaking 29 AAR 2348**

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**Stacie Gravito** < stacie.gravito@azdhs.gov >  
To: Lucinda Feeley < lucinda.feeley@azdhs.gov >

Thu, Nov 2, 2023 at 10:21 AM

Also putting this on your radar!

----- Forwarded message -----

From: **Ruthann Smejkal** < ruthann.smejkal@azdhs.gov >  
Date: Thu, Nov 2, 2023 at 10:05 AM  
Subject: Re: Clarification on Proposed Rulemaking 29 AAR 2348  
To: Stacie Gravito < stacie.gravito@azdhs.gov >

She makes some very valid points. I have not read the telehealth rulemaking. I believe that Lucinda is doing that rulemaking. I would suggest that something be added about scope of practice and that the Megans, Brian, and whoever is overseeing the Rad Tech folks be informed of the concerns and some discussion occurs. The NPR was just published and the close of record for the rulemaking is November 20. We could potentially make some changes to "clarify" that we are not requiring a telehealth provider to work outside their scope of practice.

On Thu, Nov 2, 2023 at 8:16 AM Stacie Gravito < stacie.gravito@azdhs.gov > wrote:

FYI

----- Forwarded message -----

From: **Meredith Check** < mcheck@asrt.org >  
Date: Thu, Nov 2, 2023 at 7:51 AM  
Subject: Clarification on Proposed Rulemaking 29 AAR 2348  
To: thomas.salow@azdhs.gov < thomas.salow@azdhs.gov >  
Cc: stacie.gravito@azdhs.gov < stacie.gravito@azdhs.gov >

Greetings!

My name is Meredith Check, and I'm from the American Society of Radiologic Technologists, represent over 156,000 medical imaging and radiation therapy professionals across the country including 2,796 radiologic technologists in Arizona.

As I was reviewing the proposed rules on telehealth, I have a few questions regarding the way this rule will impact radiologic technologists.

1. Does the Department envision a radiologic technologist being able to perform a medical imaging or radiation therapy procedure via telehealth (I.e. the Rad Tech is out of state but the patient and equipment is in-state)?
2. In the preliminary summary, it states that the radiologic technologist can provide notification and follow-up care, however it is the responsibility of the prescribing licensed practitioner and not the Rad Tech to provide that information to the patient. Could you please elaborate on the kind of follow up care the Department is expecting the Rad Tech to perform?
3. Additionally, the real-time consultation to specialists to expedite diagnosis and treatment plans, as mentioned in the preliminary summary, is typically licensed practitioner to licensed practitioner. Does the Department envision these specialists to prescribe and supervise the medical imaging and radiation therapy procedures via telehealth (I.e. the Rad Tech is in Arizona with the patient and the specialist is out of state)?

Thank you for your time to answer these questions so the ASRT can appropriately comment on the proposed rule by the November 20th deadline.

Kindly,

Meredith Check

### **Meredith Check, MPP**

Manager of Government Relations & Public Policy

(she/her)

800-444-2778, Ext. 1314

505-298-4500, Ext. 1314



[asrt.org](http://asrt.org)



[foundation.asrt.org](http://foundation.asrt.org)



#### **Patients Are Our Passion. Safety Is Our Priority.**

Celebrate the important role medical imaging and radiation therapy professionals play in patient care and safety and in elevating the profession for the future. This year, National Radiologic Technology Week® takes place Nov. 5-11. Plan your celebration and order official NRTW® products. [Learn More.](#)

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#### **Stacie C. Gravito**

she/her/hers ([what's this?](#))

*Office Chief || Administrative Counsel || HIPAA Privacy Officer*

Administrative Counsel and Rules

Policy and Intergovernmental Affairs

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*Health and Wellness for Arizonans*

## C-5.

### DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 25, Article 1, 9-12

**Amend:** R9-25-101, R9-25-901, R9-25-902, R9-25-903, R9-25-905, R9-25-906, R9-25-907, R9-25-909, R9-25-911, R9-25-1001, R9-25-1005, R9-25-1101, R9-25-1102, R9-25-1103, R9-25-1104, R9-25-1105, R9-25-1106, R9-25-1107, R9-25-1108, R9-25-1109, R9-25-1110, R9-25-1201, Table 12.1

**Repeal:** R9-25-907, R9-25-908, R9-25-909, R9-25-911, Exhibit 9A, Exhibit 9B, R9-25-1003, R9-25-1004, R9-25-1005, R9-25-1006

**New Section:** R9-25-904, R9-25-908, R9-25-910, R9-25-1002, R9-25-1003, R9-25-1004, Table 10.1, Table 10.2,

**Renumber:** R9-25-903, R9-25-904, R9-25-906, R9-25-907, R9-25-909, R9-25-910, R9-25-911, R9-25-912, R9-25-1002, R9-25-1005



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 8, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 8, 2024

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 25, Article 1, 9-12

**Amend:** R9-25-101, R9-25-901, R9-25-902, R9-25-903, R9-25-905, R9-25-906, R9-25-907, R9-25-909, R9-25-911, R9-25-1001, R9-25-1005, R9-25-1101, R9-25-1102, R9-25-1103, R9-25-1104, R9-25-1105, R9-25-1106, R9-25-1107, R9-25-1108, R9-25-1109, R9-25-1110, R9-25-1201, Table 12.1

**Repeal:** R9-25-907, R9-25-908, R9-25-909, R9-25-911, Exhibit 9A, Exhibit 9B, R9-25-1003, R9-25-1004, R9-25-1005, R9-25-1006

**New Section:** R9-25-904, R9-25-908, R9-25-910, R9-25-1002, R9-25-1003, R9-25-1004, Table 10.1, Table 10.2

**Renumber:** R9-25-903, R9-25-904, R9-25-906, R9-25-907, R9-25-909, R9-25-910, R9-25-911, R9-25-912, R9-25-1002, R9-25-1005

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### **Summary:**

This regular rulemaking from the Department of Health Services (Department) seeks to amend twenty-two (22) rules and one (1) table; repeal eight (8) rules and two (2) exhibits; adding six (6) new sections and two (2) new tables; and renumber ten (10) rules related to Emergency Medical Services. Specifically, Article 1 relates to General Provisions; Article 9 relates to Ground Ambulance Certificate of Necessity; Article 10 relates to Ground Ambulance Vehicle Registration; Article 11 relates to Ground Ambulance Certificate Rates and Charges; and Article 12 relates to Time Frames for Department Approvals.

The Department is required to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules related to the regulation of ground ambulance services.

Department is seeking an immediate effective date as allowed under A.R.S. § 41-1032(A)(1) and (3) in that they improve public health and safety and provide a benefit to the public, and are necessary to comply with deadlines in amendments to governing statutes changed by Laws 2022, Ch. 381.

This rulemaking partially relates to a five-year-review report approved by the Council on July 6, 2017. This rulemaking began in 2019 and has continued through the summer of 2023, including multiple drafts, extensive comments from stakeholders, and many stakeholder meetings to develop the new rules.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

The Department states the rules do not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department reviewed the following studies during the course of this rulemaking:

- National Emergency Medical Services Information System (NEMESIS) reporting guidelines (<https://nemsis.org/v3-5-0-revision/v3-5-resources/>), which contain national standards for reporting quality assurance data, including standards for dispatch and patient care reports.
- National Association of State EMS Officials (NASEMSO) National Model EMS Clinical Guidelines ([https://nasemso.org/wp-content/uploads/National-Model-EMS-Clinical-Guidelines\\_2022-ver2.pdf](https://nasemso.org/wp-content/uploads/National-Model-EMS-Clinical-Guidelines_2022-ver2.pdf)), which contains guidelines related to quality assurance and/or continued performance improvement programs, which facilitate the identification of gaps and potential avenues of their resolution within an EMS system.
- Prehospital Emergency Care Recommended Essential Equipment for Basic Life Support and Advanced Life Support Ground Ambulances 2020: A Joint Position

Statement (<https://doi.org/10.1080/10903127.2021.1886382>), which identifies the equipment necessary to provide quality care according to the National EMS Model Guidelines with support from the National Association of EMS Physicians, American Academy of Pediatrics, American College of Surgeons Committee on Trauma, EMS for Children Innovation and Improvement Center, Emergency Nurses Association, and National Association of State EMS Officials, and National Association of Emergency Medical Technicians.

- Emergency Medical Services for Children (EMSC) Innovation and Improvement Center National Prehospital Pediatric Readiness Project guidelines (<https://emscimprovement.center/domains/prehospital-care/prehospital-pediatric-readiness/>), which provides guidelines, checklists, and toolkits for providing emergency care to children in a pre-hospital environment in accordance with national recommendations.

**4. Summary of the agency’s economic impact analysis:**

This rulemaking seeks to address several issues within the rules outlining requirements for ground ambulance certificates, for registration of ground ambulance vehicles, and for ground ambulance service rates and charges and contracts. This rulemaking restructures rules to improve clarity, remove duplication, and increase effectiveness. Because the changes are largely structural, there is little cost associated with the rulemaking.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

**6. What are the economic impacts on stakeholders?**

The Department anticipates that the rulemaking may affect the Department; applicants for and certificate holders of ground ambulance service certificates of necessity; health care institutions; emergency medical care technicians (EMCTs); patients and their families; and the general public. Additionally, it is possible that air ambulance services and fire services may be affected. Because most of the changes clarify existing rules, there are no new fees associated with this rulemaking and any increased costs are associated with safety and quality assurance.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

ARS §41-1057(D)(7) states the Council shall not approve the rule unless “[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.”

ARS § 41-1025(B) continues with “In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.”

The Department has indicated that the amendments made between the proposed and final rulemakings are not considered a substantial change as the interests of the persons affected by the rule have not changed, the subject matter of the rule has not changed, and the differences between the proposed and final rules are minimal.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department received ten sets of written comments and nine individuals provided comments during the Oral Proceeding, including two individuals who also provided written comments covering the same topics. Comments were made on some of the following issues: definitions, inter facility transport, ambulance staffing, dispatch contracting, waiver for GPS for providers in rural areas, rate requests and rate of return, back up agreements, timing of the rulemaking process, questions regarding HB 2609, certificates of necessity, and reporting methodology for Ambulance Revenue and Cost Report. The Department provided a summary of each comment and the Department’s response in their NFR.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that a permit or license is not used as by statute, the Department issues certificates of necessity.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates that federal law does not apply to these rules.

## **11. Conclusion**

This regular rulemaking from the Department of Health Services seeks to amend twenty-two rules and one table; repeal eight rules and two exhibits; add six new sections and two new tables; and renumber ten rules related to Emergency Medical Services. As indicated above, this rulemaking partially relates to a five-year-review report approved by the Council on July 6, 2017. The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) and (A)(3). Council staff recommends approval of this rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

January 3, 2024

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 N. 15th Avenue, Suite 305  
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Articles 1, 9, 10, 11, and 12, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: October 16, 2023
2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 25 partially relates to a five-year-review report approved by the Council on July 6, 2017. In addition, the rulemaking adopts rules to comply with Laws 2022, Ch. 381 and to address stakeholder concerns.
3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:  
The rulemaking does not establish a new fee.
4. Whether the rulemaking contains a fee increase:  
The rulemaking does not contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:  
Yes, the Department is requesting an immediate effective date for the rules.

The Department is requesting that the rules be heard at the Council meeting on March 5, 2024.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov).

Sincerely,

**Stacie Gravito** Digitally signed by Stacie  
Gravito  
Date: 2024.01.03 11:05:35 -07'00'

Stacie Gravito  
Director's Designee

SG:rms

Enclosures

Katie Hobbs | Governor    Jennie Cunico | Acting Director

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*Health and Wellness for all Arizonans*

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 25. EMERGENCY MEDICAL SERVICES**

**ARTICLE 1. GENERAL**

**ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY**

**ARTICLE 10. GROUND AMBULANCE VEHICLE REGISTRATION**

**ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS**

**ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Article, Part or Sections Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	R9-25-101	Amend
	R9-25-901	Amend
	R9-25-902	Amend
	R9-25-903	Re-number
	R9-25-903	Amend
	R9-25-904	Re-number
	R9-25-904	New Section
	R9-25-905	Amend
	R9-25-906	Re-number
	R9-25-906	Amend
	R9-25-907	Repeal
	R9-25-907	Re-number
	R9-26-907	Amend
	R9-25-908	Repeal
	R9-25-908	New Section
	R9-25-909	Repeal
	R9-25-909	Re-number
	R9-25-909	Amend
	R9-25-910	Re-number
	R9-25-910	New Section
	R9-25-911	Repeal
	R9-25-911	Re-number

R9-25-911	Amend
R9-25-912	Renumber
Exhibit 9A	Repeal
Exhibit 9B	Repeal
R9-25-1001	Amend
R9-25-1002	Renumber
R9-25-1002	New Section
R9-25-1003	Repeal
R9-25-1003	New Section
R9-25-1004	Repeal
R9-25-1004	New Section
R9-25-1005	Repeal
R9-25-1005	Renumber
R9-25-1005	Amend
R9-25-1006	Repeal
Table 10.1	New Section
Table 10.2	New Section
R9-25-1101	Amend
R9-25-1102	Amend
R9-25-1103	Amend
R9-25-1104	Amend
R9-25-1105	Amend
R9-25-1106	Amend
R9-25-1107	Amend
R9-25-1108	Amend
R9-25-1109	Amend
R9-25-1110	Amend
R9-25-1201	Amend
Table 12.1	Amend

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

Authorizing Statutes: A.R.S. §§ 36-132(A)(7), 36-136(G), 36-2202(A)

Implementing Statutes: A.R.S. §§ 36-2202(A)(5), 36-2204, 36-2212, 36-2232, 36-2233, 36-2234, 36-2235, 36-2236, 36-2237, 36-2239, 36-2240, 36-2241, and 36-2247

**3. The effective date of the rules:**

The Arizona Department of Health Services (Department) requests an immediate effective date for the rules, to enable the rules to be effective as soon as possible after the effective date of the statutory changes made by Laws 2022, Ch. 381. The rulemaking satisfies the requirements in A.R.S. § 41-1032(A)(1) and (3) in that they improve public health and safety and provide a benefit to the public, and are necessary to comply with deadlines in amendments to governing statutes changed by Laws 2022, Ch. 381. In addition, some of the rules are less stringent and burdensome than the current rules.

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

Notice of Proposed Rulemaking: 29 A.A.R. 2063, September 15, 2023

Notice of Rulemaking Docket Opening: 29 A.A.R. 1897, August 25, 2023

Notice of Rulemaking Docket Opening: 28 A.A.R. 593, March 11, 2022

Notice of Rulemaking Docket Opening: 27 A.A.R. 436, March 12, 2021

Notice of Rulemaking Docket Opening: 25 A.A.R. 3292, November 8, 2019

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

Name: Rachel Garcia, Bureau Chief

Address: Arizona Department of Health Services  
Bureau of Emergency Medical Services and Trauma System  
150 N. 18th Ave., Suite 540  
Phoenix, AZ 85007-3248

Telephone: (602) 364-3150

Fax: (602) 364-3568

E-mail: Rachel.Garcia@azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stacie.Gravito@azdhs.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. Title 36, Chapter 21.1, Article 2, specifies requirements related to the regulation of ground ambulance services. The Department has adopted rules to implement these statutes in 9 A.A.C. 25. The rules in 9 A.A.C. 25, Articles 9, 10, and 11, establish requirements for ground ambulance certificates of necessity, for registration of ground ambulance vehicles, and for ground ambulance service rates and charges and contracts, respectively, to ensure the health and safety of patients being transported. In a five-year-review report approved by the Governor's Regulatory Review Council on July 6, 2017, the Department identified several issues with these rules and proposed a rulemaking to address these issues. These issues include non-compliance with A.R.S. § 41-1080, unclear requirements, requirements inconsistent with current standards of operation for ground ambulance services, and poor organization of the rules. All of these issues may affect the effectiveness of the rules and, thus, threaten the health and safety of patients being transported. The Department also requested input from stakeholders to identify additional issues. Laws 2022, Ch. 381, made statutory changes that required additional revisions of the rules. The rulemaking revises the rules in 9 A.A.C. 25, Articles 9 through 11, to address these issues and other issues identified by stakeholders as part of the rulemaking process and to restructure the rules to improve clarity, remove duplication, and increase effectiveness. Clarifying changes are also being made in Articles 1 and 12. This rulemaking, which was begun in 2019 and continued through the summer of 2023, included multiple drafts, extensive comments from stakeholders, and many stakeholder meetings to develop the new rules. These changes conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

The Department reviewed the following for this rulemaking:

- National Emergency Medical Services Information System (NEMSIS) reporting guidelines (<https://nemsis.org/v3-5-0-revision/v3-5-resources/>), which contain national standards for reporting quality assurance data, including standards for dispatch and patient care reports.

- National Association of State EMS Officials (NASEMSO) National Model EMS Clinical Guidelines  
([https://nasemso.org/wp-content/uploads/National-Model-EMS-Clinical-Guidelines\\_2022-ver2.pdf](https://nasemso.org/wp-content/uploads/National-Model-EMS-Clinical-Guidelines_2022-ver2.pdf)), which contains guidelines related to quality assurance and/or continued performance improvement programs, which facilitate the identification of gaps and potential avenues of their resolution within an EMS system.
- Prehospital Emergency Care Recommended Essential Equipment for Basic Life Support and Advanced Life Support Ground Ambulances 2020: A Joint Position Statement  
(<https://doi.org/10.1080/10903127.2021.1886382>), which identifies the equipment necessary to provide quality care according to the National EMS Model Guidelines with support from the National Association of EMS Physicians, American Academy of Pediatrics, American College of Surgeons Committee on Trauma, EMS for Children Innovation and Improvement Center, Emergency Nurses Association, and National Association of State EMS Officials, and National Association of Emergency Medical Technicians.
- Emergency Medical Services for Children (EMSC) Innovation and Improvement Center National Prehospital Pediatric Readiness Project guidelines  
(<https://emscimprovement.center/domains/prehospital-care/prehospital-pediatric-readiness/>), which provides guidelines, checklists, and toolkits for providing emergency care to children in a pre-hospital environment in accordance with national recommendations.

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

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

The Department anticipates that the rulemaking may affect the Department, applicants for and certificate holders of ground ambulance service certificates of necessity, health care institutions, emergency medical care technicians (EMCTs), patients and their families, and the general public. In addition, it is possible that air ambulance services and fire services could be affected. Annual costs/revenues changes are designated as minimal when more than \$0 and \$2,000 or less, moderate when between \$2,000 and \$20,000, and substantial when \$20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

The Department believes that making changes to clarify the rules may make the rules easier to understand and comply with, and may provide a significant benefit to all stakeholders, including the Department. The Department may also receive a significant benefit from changes to the

requirements in applications, specifying requirements for inspections and investigations, clarifying information in Article 11, replacing Exhibits 9A and 9B, providing more specificity related to response-time determinations, requiring the submission of data related to patient care, and requiring performance improvement processes. With the improved clarity and specificity in the rules, the Department may receive a minimal-to-moderate reduction in costs for providing guidance and technical assistance on an ongoing basis to applicants and certificate holders regarding elements of the rules.

Applicants for ground ambulance service certificates of necessity may incur minimal increased costs from additional submission requirements now specified in the rules, but may also receive a significant benefit from knowing beforehand what information and documents should or could be provided, instead of being asked by the Department for these documents once an application has been submitted. A certificate holder could incur up to substantial costs or experience up to a substantial loss of revenue from requirements related to transfers, renewals, amendments, or determinations related to public necessity or response times, even though these changes mirror, for the most part, the current practice of the Department. Besides costs directly associated with Laws 2022, Ch. 381, certificate holders may incur up to substantial increased costs due to revising standards for ground ambulance vehicles and the categorization of major defects and minor defects, and requirements for additional supplies and equipment on ground ambulance vehicles, consistent with current industry standards. Certificate holders may also incur up to substantial costs due to requirements for dispatching and scheduling, as well as new requirements for interfacility transports. Depending on whether a ground ambulance service is currently performing these activities as a routine part of operating a ground ambulance service, conducting activities related to assessing performance, monitoring the performance of EMCTs under the certificate of necessity, and other quality assurance activities could cause a certificate holder to incur up to substantial costs. Requiring the submission of dispatch records could cause a ground ambulance service to incur up to moderate costs. For those few ground ambulance services that have not been submitting patient data to the Department for quality improvement purposes, doing so, to comply with new requirements, may cause the ground ambulance services to incur moderate increased costs. The Department anticipates that a certificate holder could incur up to minimal costs to become familiar with having the content of the Ambulance Revenue and Cost Report in rule, rather than having a form as an Exhibit in the rules, even though the online documents would be unchanged and still available. Clarifying requirements related to requested rates and other changes to requirements in Article 11 could cause a certificate holder to experience up to a substantial increase in costs or decrease in revenue.

Health care institutions have long informed the Department of issues they are experiencing with interfacility transports. However, because the Department does not have requirements specific to interfacility transports in the current rules, the Department was limited in what could be done to address these issues from a regulatory stand-point. The new rules include requirements directly related to interfacility transports, both those for patients with time-critical conditions, and those with no time-critical condition. The Department anticipates that the new requirements related to interfacility transports may provide a significant benefit to health care institutions. Health care institutions may also receive a significant benefit from the changes for assessing response times and from clarifications and updates to the rules, making them more understandable and easier to follow.

The Department expects that making these changes to the rules could increase the standard of care for patients. While fire services that are not certificate holders are not directly affected by these rules, if fire services choose to provide the same, higher standard of care as would be provided by the EMCTs of ground ambulance services under these rules, they could experience up to a substantial increase in costs. If hospitals that were having issues with the timely arrival of a ground ambulance vehicle for an interfacility transport, and were therefore using air ambulance services to transport patients with time-critical conditions to another facility providing an appropriate level of care, begin to see more timely, consistent, and reliable transport from ground ambulance services due to the changes in the rules, they may reduce their use of transports by air ambulance services. If so, an air ambulance service could experience a substantial reduction of income due to the changes in the rules.

EMCTs may receive a significant benefit from having rules to follow that are clearer and easier to understand, as well as having the use of the added supplies and equipment in providing quality patient care. Because a ground ambulance service may be monitoring EMCT performance more closely due to changes in the rules, it is possible that an EMCT who is believed to be acting in an unprofessional manner could experience up to a substantial loss of income/revenue if the EMCT undergoes disciplinary action or is fired based on actions revealed during monitoring.

The new requirements related to interfacility transports and critical care services may also provide a significant benefit to patients and their families. The quality improvement processes, now required in rule, may also result in a significant benefit to patients and their families by enabling ground ambulance services to identify potential problems and to address them, which may result in better patient care. Similarly, specifying requirements related to critical care services may result in a significant benefit to patients and their families. The Department anticipates that the general public may receive a significant benefit from the changes to the rules, which are expected to improve the quality of emergency care in the state.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

Between the proposed rulemaking and final rulemaking, the Department made some clarifying changes to the rules. In R9-25-901(42), the Department corrected the definition of “standby waiting rate” consistent with the wording in other rate definitions. In R9-25-908(E)(1), the Department clarified that the written agreement could be internal policies and procedures if the ground ambulance service performs its own dispatching and added in subsection (E)(1)(d) “or other agreement,” consistent with the lead-in in subsection (E)(1). In R9-25-911(B)(4) and (C), the word “disciplinary” was replaced with “enforcement,” consistent with the title of the Section. In R9-25-1102(E), the Department clarified that a certificate holder with a uniform general public rate would only need to submit an application for a different general public rate if notified that the Department had made a decision to grant a different general public rate to a certificate holder under subsection (D) that had been under the uniform general public rate and wanted a different general public rate as well. In addition, the Department made the following changes based on the comments received, as described below in paragraph 11:

- In R9-25-901(39), the Department is clarifying the rule by reverting back to the current definitions of “urban area,” “suburban area,” “rural area,” and “wilderness area” since they are what current response times are based on and what certificate holder are familiar with.
- In R9-25-908(E)(3)(a), the Department is clarifying that, if the ground ambulance service receiving a request for an interfacility transport has already specified the estimated time of arrival in a Department-approved service agreement with the person requesting the interfacility transport, the requirement in R9-25-908(E)(3)(a) has already been satisfied and another estimated time of arrival does not need to be provided again unless it needs to be amended.
- In R9-25-1106(C), the Department is changing the rule to the original wording on the understanding that the change would not be substantive since rates both higher and lower than 7% can be approved with justification.
- In R9-25-901(17) and R9-25-1107(D), the Department is revising the definition of “critical care rate” to be similar to the definitions for other rates and moving the requirement that the rate be equivalent to at least the amount for specialty care transport, as used in federal Medicare guidelines, from the definition into R9-25-1107(D), as well as clarifying in R9-25-1107(D) that the critical care rate would be greater than an ALS base rate.
- In R9-25-1108(B), the Department is adding a citation to A.R.S. § 36-2232(A)(4) to further clarify statutory authority for the rule.

In addition, the Department is adding a delayed effective date for requirements in R9-25-908

(C)(5)(b) and R9-25-908(E)(3)(c) and (H) to address stakeholder concerns.

**11. An agency’s summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:**

The Department received ten sets of written comments about the proposed rules. An Oral Proceeding was held on October 16, 2023, both in-person and virtually. Thirteen individuals attended in-person, and another six attended virtually. Nine individuals provided comments during the Oral Proceeding, including two individuals who also provided written comments covering the same topics. A summary of the comments and the Department’s responses are provided below. Statutory references are based on the statutes in effect as of January 1, 2024.

#	Comment	Department’s Response
The following written comments were received by the Department.		
1	The following comments were received from Public Policy Partners on behalf of clients:	
a	Concerns were expressed about the deletion of the definitions of subsections 37 (Rural area), 47 (Suburban area), and 52 (Urban area) and their replacement with a new definition in subsection 38, “Scenic locality.” The commenter stated that “[t]he current definitions more than adequately comply with the statutory requirements and are well-understood by the industry,” “[a]pplying singular dispatch thresholds statewide in a one size fits all manner fails to consider inconsistent population densities throughout the state,” and the changes “would result in rural areas such as Benson and Safford being defined as urban and, with the unreasonable statewide universal response time requirements in Article 9, would result in many rural towns having required response times that are the same as metropolitan Phoenix.	The definitions for “urban area,” “suburban area,” “rural area,” and “wilderness area” are not used in the body of the rules, only in the definition of the term “scene locality.” Therefore, the definitions/descriptions of these term are included in the definition of “scene locality.” While the definitions have not been changed in over 20 years, they are what current response times are based on and what stakeholders are familiar with. Since reporting response times is now being required by Laws 2022, Ch. 381, it would be a disservice to the EMS system in Arizona to change what a specific area is termed, based on the definitions in the current rules versus proposed rules. Therefore, the Department plans to revert back to the current definitions, and may further refine the definitions during a subsequent rulemaking to be more consistent with current GIS terminology. The Department does not believe this change to be substantive since the change would not be expected to affect existing certificate holders. Scene localities are closely associated with response times, because there may be different response times for different scene localities. The response times for specific scene localities are included on certificates of necessity and would not be changed unless and until a review of response times, required by A.R.S. 36-2232(A)(4), revealed that the response times were inappropriate, or if the certificate of necessity were amended. The Department does not plan to review existing response times until any outstanding issues are resolved.
b	Concerns were expressed about interfacility transports, both for patients with time-critical conditions	The Department believes the Department has statutory authority to regulate interfacility transports. A.R.S. § 36-2232(A)(3) requires the Department to “[r]egulate

<p>and those with no time-critical condition, stating that the Department does not have statutory authority to regulate interfacility transports. New wording in R9-25-907(B)(8)(b) states that the Department may consider the anticipated volumes of both 9-1-1 calls and interfacility transfers in determining response times, if a certificate holder provides interfacility transports of patients with a time-critical condition. The commenter stated that this could force a certificate provider to choose whether to send an ambulance to respond to a 9-1-1 call or to a call for transporting a patient with a time-critical condition. The commenter stated a concern about interfacility transports of patients with no time-critical condition that R9-25-908(E)(3)(c) requires that an ambulance arrive within 60 minutes of the dispatch for 90% of these transports, which the commenter believed would put “unreasonable pressures on [a rural] ambulance provider.” The commenter also stated that they “work collaboratively to meet the needs of both the 9-1-1 system and interfacility transports” and that “[t]his process should remain unchanged to uphold the integrity of the emergency 9-1-1 calls.</p>	<p>operating and response times of ambulances to meet the needs of the public and to ensure adequate service.” A.R.S. § 36-2232(A)(9) requires the Department to “[r]egulate ambulance services in all matters affecting services to the public.” A.R.S. § 36-2202(J) now specifies requirements related to interfacility transports. The definition of “emergency ambulance services” in A.R.S. § 20-2801 includes “accessing an ambulance or emergency response by calling 911 or a designated telephone number to reach a public safety answering point and receiving time sensitive medical attention.” Based on stakeholder requests, the definition of “response time” now includes interfacility transports for patients with time-critical conditions. Under the current rules, the Department has very little ability to regulate interfacility transports for most certificate holders, despite receiving many calls and complaints expressing concerns about them.</p> <p>The Department has received information about estimated times of arrival being changed multiple times, or a ground ambulance vehicle showing up hours after it was expected. The new rules contain a benchmark for how much leeway a certificate holder has to get a ground ambulance vehicle to the patient’s location. They also require a certificate holder to review the factors that may have contributed to an interfacility transport not meeting the standards through the quality improvement process. Although they do not put a cap on the number of times an estimated time of arrival is amended, they do require a certificate holder to assess the performance of interfacility transports. They also allow the Department to collect information about how often an estimated time of arrival is amended and factors that may contribute to a ground ambulance service not meeting the standards in the rules.</p> <p>If an ambulance service is only equipping and staffing to meet anticipated 9-1-1 calls, then any interfacility transports may just be considered as providing extra revenue from an ambulance that is not otherwise occupied with a 9-1-1 transport. Many interfacility transports are just as, or even more, time-critical as many 9-1-1 calls. The Department must ensure that ground ambulance services can and do meet the needs of all transports in the certificated service area. Therefore, the anticipated number of interfacility transports, which also require ground ambulance service resources, are considered when gauging whether the current resources in a service area are sufficient for the population - for all types of transports.</p>
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		<p>The rules do not require an arrival of an ambulance for an interfacility transport of a patient with no time-critical condition to be within 60 minutes of dispatch; the rules require arrival to be within 60 minutes of the time the ambulance service says they will be there to pick up the patient, unless the certificate holder has provided a justification as to why a different amount of leeway is needed. This allows a hospital to better plan the discharge and coordinate with the receiving facility. Currently, all certificates of necessity with an interfacility transport time on them list arrival within 60 minutes of the estimated time, which is what was put into the rules. However, an applicant may provide information as part of an application that justifies why a different time should be made part of the certificate of necessity, both for response times and interfacility transports of patients with no time-critical condition.</p> <p>The Department has made many changes, based on stakeholder input, in the drafts leading to the Notice of Proposed Rulemaking, and does not plan to change the rules further based on the comment. However, the Department does plan to revise the rules to delay the implementation of R9-25-908(E)(3)(c) and (H) until January 1, 2025 and plans to work further with stakeholders during a subsequent rulemaking, for which the Department has already received approval under A.R.S. § 41-1039(A), to further refine the requirements.</p>
c	<p>A concern was expressed about the definition of “critical care rate,” stating that the definition would result in the critical care rate being less than the ALS rate or BLS rate.</p>	<p>Rate-setting should not be done in a definition. In R9-25-1107, the new rules specify that, when evaluating a proposed critical care rate, the Department shall consider the factors considered in setting a BLS rate, additional factors considered in setting an ALS rate, as well as additional costs associated with providing critical care services. Therefore, a critical care rate would always be at least the same as, or higher than, the ALS rate. To address stakeholder concerns, the Department is revising the rules to make the definition of “critical care rate” similar to the definitions for other rates and moving the requirement that the rate be equivalent to at least the amount for specialty care transport, as used in federal Medicare guidelines, from the definition into R9-25-1107, as well as clarifying that the critical care rate would be greater than an ALS base rate.</p>
d	<p>A concern was expressed about ambulance staffing for providing critical care services in R9-25-908(C)(5)(b), stating that there is currently no endorsement in critical care services</p>	<p>The Department is currently drafting revisions to 9 A.A.C. 25, Article 3 and 4, to allow for an endorsement to be added to a Paramedic’s certification, along with updating the scope of practice for Paramedics. The current scope of practice does not include many of the skills that may be required during a</p>

	<p>available to a Paramedic in Arizona, so a register nurse must be on an ambulance providing a critical care transport.</p>	<p>critical care transport, so a nurse, not a Paramedic, should already be staffing such transports.</p> <p>The Department does not plan to change the rules based on the comment. However, the Department does plan to revise the rules to delay the implementation of R9-25-908(C)(5)(b) until January 1, 2025, by which time the revisions to Article 3 and 4 should be completed, and plans to work further with stakeholders during a subsequent rulemaking, for which the Department has already received approval under A.R.S. § 41-1039(A), to further refine the requirements.</p>
e	<p>A concern was expressed about having to contract for dispatching in R9-25-908(E)(1), rather than providing dispatching internally.</p>	<p>The rules do not require contracting for dispatching. As mentioned in paragraph 10 above, the Department had already identified the need to clarify that the written agreement for dispatching could be internal policies and procedures if the ground ambulance service performs its own dispatching and added in subsection (E)(1)(d) “or other agreement,” consistent with the lead-in in subsection (E)(1).</p>
f	<p>A concern was expressed about R9-25-1005(E)(5), stating that there are areas in the state where “GPS access is nonexistent.” The waiver to the requirement was stated as being put in place to allow rural providers to be exempt. A requirement to provide a future date by which a certificate holder will comply with the requirement was thought to be problematic and could lead to the loss of rural providers.</p>	<p>The Department has to implement the statute as written, regardless of the perceived intent. A rural provider with an ambulance deployed in an area with no connectivity would certainly qualify for a waiver for that ambulance. However, there are reasons other than GPS connectivity that may cause a certificate holder to request a waiver. The statute does not single out rural providers as the only ones who can request a waiver. Technology is changing all the time, and what is impossible or too costly today may not be so in the future. The Department had received feedback from several stakeholders that it would be easier and more efficient for them to request a waiver when an application for ambulance vehicle registration is submitted. The proposed rules better align requests for waiver with annual registrations, based on this feedback. Although the Department does not plan to change the rules based on the comment, the Department is developing forms for requesting a waiver, as well as training that may provide guidance to a certificate holder, which will be available on the Bureau’s webpages.</p>
g	<p>A concern was expressed about requirements in R9-25-1102 and that the proposed rules are silent about what happens if an ambulance service is granted authority to operate in an area with a uniform general public rate and applies for a different rate. Provisions in the rules for a certificate holder under a general public rate to</p>	<p>The Department does not have the authority to specify what general public rate an applicant for a certificate of necessity requests, only what is granted. If an applicant for a certificate of necessity, for a service area in which a uniform public rate is in existence, requests a different general public rate, concerns about what effect that will have on the certificate holders under the uniform public rate would be considered during the review and, if necessary, hearing process before a certificate of necessity/general public rate is granted and finalized. Nor do the statutes give the Department authority</p>

	<p>request a different rate undermines the uniform general public rates process.</p>	<p>to stop a certificate holder under a uniform general public rate from applying for a different general public rate. However, the Department would consider what affect the request would have on other certificate holders and on the EMS system in general when making a decision about the requested general public rate. Other certificate holders under the uniform general public rate would only have to establish their own general public rates if the different general public rate is granted and the “uniform general public rate” is void. As mentioned in paragraph 10 above, the Department had already identified the need to clarify that the notification that would require a certificate holder with a uniform general public rate to submit an application for a different general public rate is the notification that the Department had made a decision to grant a different general public rate to a certificate holder under subsection (D) that had been under the uniform general public rate.</p>
h	<p>Concerns were expressed about the change in R9-25-1106(C) about the rate of return and the addition of R9-25-1108(B), stating that the rule currently requires the Director to establish rates to provide for at least a 7% rate of return unless the applicant request a lower amount. The new rules switch that and cap the rate of return at 7% unless a higher rate of return is requested and justified. Under R9-25-1108(B) and A.R.S. § 36-2232(A)(1), the Department can unilaterally change a rate of return. These are problematic.</p>	<p>As mentioned in the comment, the commenter does not recall any request for a rate of return more than 7%; nor does the Department. As mentioned and discussed during a stakeholder meeting, the rule was originally intended to cap the rate of return at 7%, absent justification for a higher rate. The author of the requirement stated during the meeting that it was meant to be “guidance for the Department” that 7% was a reasonable rate of return, that it “wasn’t meant to be a minimum or a maximum and both required justification for the filing.” Hence a <i>de facto</i> cap of 7% has been existence ever since. This rule change was to reinstate the original intent of the rule. A certificate holder could still be granted a higher than 7% rate of return, but just had to have justification for the higher rate. Since it is unlikely that a rate of return other than of 7% would be requested or granted, given the more than 20-year history, the Department will change the rule to the original wording, on the understanding that the change would not be substantive. The Department does not believe the change to be substantive since rates both higher and lower than 7% can be approved with justification and, thus, the change would have no effect on stakeholders.</p> <p>The provision in R9-25-1108(B) clarifies the ability of the Department under statute to “[d]etermine, fix, alter and regulate just, reasonable and sufficient rates and charges.” To further clarify and add to the statutory authority, the Department plans to add a citation to A.R.S. § 36-2232(A)(4), since a review of response times may result in changes, which could have a financial impact (as anticipated in statute) and lead to a need to alter rates and charges.</p>

2	The following comment was received from a Deputy Chief of a fire district:	
	<p>A concern was expressed about requirements in R9-25-901 in the definition of “standby waiting rate,” stating that the definition should be changed so a patient is not responsible for charges caused by the delay of a hospital.</p>	<p>All of the rate-related definitions use the same language “the monetary amount set by the Department for a certificate holder to bill a patient...” for consistency. While insurance or a third party may pay part or all of the amount billed, the amount billed is the responsibility of the patient/patient’s representative. The Department does not have the statutory authority to require a hospital to be billed (or pay for) a portion of the cost of a transport.</p> <p>The Department made several changes to the rate definitions during the course of the rulemaking, based on stakeholder input, and does not plan to change the rules further based on the comment.</p>
3	The following comments were received from the Assistant Chief of a ground ambulance service:	
a	<p>A concern was expressed about “generic interfacility response times,” especially when a Department-approved service agreement with a hospital partner specifies “negotiated and agreed upon response times when requested to transport urgent or non-urgent patients.”</p>	<p>If a certificate holder has such a service agreement, then the Department would be including these times into the certificate of necessity. Since R9-25-908(E)(3)(c) exempts a certificate holder with a time specified on the certificate of necessity from the requirement in the subsection, the requirement would not apply to that certificate holder.</p> <p>The Department does not plan to change the rules based on the comment.</p>
b	<p>A concern was expressed about having to provide an estimated time of arrival for an interfacility transport when the time has already been specified in a Department-approved service agreement with the requesting hospital partner.</p>	<p>The Department understands the concern and plans to clarify the rule that, if the ground ambulance service receiving a request for an interfacility transport has already specified the estimated time of arrival in a Department-approved service agreement with the person requesting the interfacility transport, the requirement in R9-25-908(E)(3)(a) has already been satisfied and another estimated time of arrival does not need to be provided again unless it needs to be amended.</p>
c	<p>A suggestion was made to include additional requirements and specifications for back-up agreements including “the process for developing back-up agreements, the definition of a back-up agreement, what is or is not allowed to be in a back-up agreement, who can enter into them, etc.”</p>	<p>During the four years in which requirements in this rulemaking were discussed with stakeholders, there were several discussions about back-up agreement, but the Department does not recall any requests to add such requirements into the rules. The Department is willing to discuss adding such requirements. The Department does not plan to change the rules based on the comment at this time. However, the Department does plan to work further with stakeholders during a subsequent rulemaking, for which the Department has already received approval under A.R.S. § 41-1039(A), to further refine the requirements in the rules and could include a discussion of this topic in that rulemaking.</p>

d	A suggestion was made that the definition of “health care institution” be included in the rules.	The definitions of both “health care institution” and “interfacility transport” are included in R9-25-101, since the terms are used in more than one Article in the Chapter. The Department does not plan to change the rules based on the comment.
4	The following comment was received from the Prehospital Care Program Coordinator of a medical center:	
	A concern was expressed about having to include the administrative medical director be on a committee reviewing data related to the provision of services to ensure quality patient care every quarter as part of a quality improvement committee.	The definition of an administrative medical director is included in A.R.S. § 36-2201, and the duties of an administrative medical director are specified in R9-25-201 and R9-25-502. These duties include developing policies and procedures that govern the activities of the EMCTs under the administrative medical director’s purview, providing administrative medical direction (by statutory definition, supervision of EMCTs), and ensuring competency of an EMCT in performing skills that the EMCT has been authorized by the administrative medical director to perform. As such, the administrative medical director must be part of the committee that identifies and discusses issues related to the quality of patient care provided by EMCTs, and implements activities to improve performance when deviations in patient care, transport, or documentation are identified.  The Department does not plan to change the rules based on the comment.
5	The following comments were originally directed to an Assistant Director of the Department by Public Policy Partners on behalf of clients and forwarded as formal comments about the rules:	
a	A concern was expressed about the definition of “scene locality.”	See the response to comment (1)(a).
b	Concerns were expressed about interfacility transports.	See the response to comment (1)(b).
c	A concern was expressed about the definition of “critical care rate.”	See the response to comment (1)(c).
d	A concern was expressed about ambulance staffing for providing critical care services.	See the response to comment (1)(d).
e	A concern was expressed about dispatch and scheduling.	See the response to comment (1)(e).
f	A concern was expressed about requirements for uniform rates.	See the response to comment (1)(g).
g	A concern was expressed about the rate of return.	See the response to comment (1)(h).

h	A concern was expressed about periodic review by the Department of rates and charges.	See the response to comment (1)(h).
i	A concern was expressed about the “GPS waiver requirements in R9-25-1102.”	See the response to comment (1)(f).
j	Concerns were expressed about the timing of the rulemaking process, suggesting that the rulemaking “be bifurcated so that all rules that are specifically needed to implement HB 2609 can move forward to meet the effective date of the bill. Any other issues such as IFTs [interfacility transfers], staffing requirements, etc. should be handled in a regular rulemaking process that is not on an accelerated time frame so that all parties can come to a consensus on any new rules.”	This rulemaking has been ongoing for four years, with extensive stakeholder involvement. Most of the changes being made to address issues identified in the five-year-review reports approved by the Governor’s Regulatory Review Council of 2017 and 2022 are not in contention. Very few changes are required in the current rules to specifically address HB 2609, if the requirement for the Department to base decisions on quality patient care (A.R.S. § 36-2232(A)(2)) is ignored. Since most of the changes identified in the five-year-review reports could affect the quality of patient care, the decision was made to add the requirements specifically addressing HB 2609 to the ongoing rulemaking. If the rulemaking were bifurcated and only requirements specifically addressing HB 2609 were included in the rulemaking, the result would be a substantive change to the proposed rules, requiring the development, filing, publication, and 30-day formal comment period for supplemental rulemaking, delating the submission of a Notice of Final Rulemaking beyond the deadline imposed by HB 2609. As stated above, the Department recognizes that some additional discussion of some topics could help ensure consensus. Therefore, the Department has initiated a subsequent rulemaking to address these topics and is proposing to delay the implementation of R9-25-908(C)(5)(b) and R9-25-908(E)(3)(c) and (H) until January 1, 2025, to allow time for the subsequent rulemaking to be completed and any necessary changes made. The Department considers the delayed implementation of rule requirements to be a non-substantive change, which would not delay this rulemaking.
6	The following comments were received from Arizona Fire District Association, Arizona Fire Chiefs Association, and Arizona Ambulance Association:	
a	A comment was made asking for clarification of what type of agencies would qualify for a waiver under HB 2609 and what types of situations would justify receiving a waiver, as well as the need for annual renewal.	The Department believes that there are reasons other than GPS connectivity that may cause a certificate holder to request a waiver, including financial hardship, so the rules do not list what those reasons would have to be. Because technology is changing all the time, and what is impossible or too costly today may not be so in the future, the waiver is not forever. The Department had received feedback from several stakeholders that it would be easier and more efficient to

		<p>request a waiver when an application for ambulance vehicle registration is submitted. The proposed rules better align requests for waiver with annual registrations, based on this feedback.</p> <p>As stated in the response to comment (1)(f), the Department is developing forms for requesting a waiver, as well as training that may provide guidance to a certificate holder, which will be available on the Bureau’s webpages. The Department believes these actions will provide clarification and assist certificate holder to obtain a waiver, if appropriate. The Department does not plan to change the rules based on the comment.</p>
b	<p>The comment was made that Section 11 of HB 2609 makes it so “HB 2609 is limited to initial and amended Certificates of Necessity.”</p>	<p>The Department believes that Section 11 of HB 2609 only pertains to A.R.S. § 36-2233 and to applications for initial or amended certificates of necessity filed with the Department, making them subject to the revisions made in A.R.S. § 36-2233 if filed on or after January 1, 2024. The Department believes that all other portions of HB 2609 have been correctly included in A.R.S. Title 36, Chapter 21.1, as codified, and pertain to all persons regulated under the Chapter as of January 1 2024.</p> <p>The Department does not plan to change the rules based on the comment.</p>
c	<p>A question was asked as to what would cause an amended certificate of necessity to be issued.</p>	<p>The Department issues certificates of necessity under A.R.S. §§ 36-2202(A), 36-2232, 36-2233, 36-2236, and 36-2240 to a specific person for a specific service area, type of service and level of service. The changes that would result in the Department issuing an amended certificate of necessity are specified in R9-25-905.</p> <p>The Department does not plan to change the rules based on the comment.</p>
d	<p>A comment was made that “only part of the ground ambulance transport market is subject to increased reporting and other requirements of HB 2609,” stating that “[e]veryone should be subject to the statute and related regulations.”</p>	<p>As stated in the response to comment (6)(b), the statutes in A.R.S. Title 36, Chapter 21.1, are applicable to all ground ambulance service certificates of necessity, not just those resulting from an initial application or application for amendment. Therefore, the rules resulting from the statutes, included in this rulemaking, are applicable to all certificate holders. There is no “bifurcated regulatory scheme.”</p> <p>The Department does not plan to change the rules based on the comment.</p>
e	<p>A comment was made that the exempt rulemaking authority in HB 2609 is only for changes related to HB 2609. There are other issues that still need to be resolved, and that “[t]here is an effort to conflate the implementation of</p>	<p>The Department is aware that the exempt rulemaking authority given by HB 2609 is only to make changes related to HB 2609. That is why the Department has sought and received approval for conducting a subsequent rulemaking, during which any outstanding issues may be resolved.</p>

	House Bill 2609 with rule modifications in Articles 9, 10, 11, and 12.”	The Department does not plan to change the rules based on the comment.
f	A concern was expressed about the definition of “scene locality” in R9-25-901(39).	See the response to comment (1)(a). The Department developed definitions that can use data available through the Census Bureau but that are unique to Arizona. However, the current definitions are what current response times are based on and what stakeholders are familiar with. With certificate holders having to report response times, those response times would have been recorded based on the current definitions. Scene localities may not be in the same category of geographic region under the proposed definitions versus the current definitions, which may create unintended inconsistencies in reported data. To ensure that the Department is complying with the intent of Laws 2022, Ch 381, The Department is planning to revert back to the current definitions, but included under the defined term of “scene locality.” As stated above, the Department does not believe this change to be substantive since the change would not be expected to affect existing certificate holders. Although there may be different response times for different scene localities, the response times for specific scene localities are on certificates of necessity and would not be changed unless and until a review of response times, required by A.R.S. 36-2232(A)(4), revealed that the response times were inappropriate, or if the certificate of necessity were amended.
g	A concern was expressed about transfers of certificates of necessity in R9-25-904.	Subsection (B), which specifies when there is a change in the controlling influence is based on the content of a substantive policy statement that has been in effect, without issues, since 2015. The change of a fire chief would not be considered a change in the controlling influence, but the purchase of a parent company by another entity would be. The prohibition of a service contract between one certificate holder and another certificate holder for one to provide services in a non-overlapping portion of the other’s service area does not prevent back-up agreements, which provide for temporary coverage, but is to prevent the <i>de facto</i> amendment/transfer of both certificate holders’ service areas without going through the amendment or transfer process. The Department does not plan to change the rules based on the comment.
h	Concerns were expressed about interfacility transports.	See the response to comment (1)(b). Interfacility transports have been discussed in meetings with stakeholders since December 2020, when the definition of “arrival time” was first discussed. The Department has made many changes to

		the rules since then, based on stakeholder input, related to interfacility transports, to ensure that requirements are not too burdensome on certificate holders while addressing the concerns of health care institutions, and is willing to continue the discussion to refine these rules during the subsequent rulemaking that the Department is beginning.
i	A concern was expressed about the definition of “critical care rate” in R9-25-901(17).	See the response to comment (1)(c).
j	A concern was expressed about response times in R9-25-907, stating that the Department has changed the requirements multiple times during the course of the rulemaking.	Throughout the rulemaking, the Department has expressed the intention of setting benchmark response times for different scene localities and has discussed several mechanisms for determining response times. Certificate holders have provided feedback that first one suggested mechanism to include them into the rules, then another, would not work, without suggesting an alternative that would work for them. During this time, the Department has done extensive research into historical response times, using actual data submitted to AZPIERS, the quality assurance database into which 90 of the 100 certificate holders have been reporting data for years. The Department has presented this data during numerous meetings with stakeholders and has developed the mechanism in rule based on the research and requirements in A.R.S. § 36-2232(A)(3). As specified in R9-25-907(B), the Department plans to set response times based on historical data, the population density and demographics in the service area or proposed service area, the geographic features and environmental conditions within the service area or proposed service area, and the geographic distribution of health care institutions within the service area or proposed service area.  The Department does not plan to change the rules further based on the comment.
k	A concern was expressed about ambulance staffing for providing critical care services in R9-25-908(C)(5)(b).	See the response to comment (1)(d).
l	A concern was expressed about requirements in R9-25-908(E)(1) for certificate holders that opt to contract for external dispatch services, stating that these requirements do not exist for those with internal dispatching.	As stated in the response to comment (1)(e), the rules do not require contracting for dispatching, nor do they pertain only to those who contract for dispatching. As mentioned in paragraph 10 above, the Department had already identified the need to clarify that the written agreement for dispatching could be internal policies and procedures if the ground ambulance service performs its own dispatching and added in subsection (E)(1)(d) “or other agreement,” consistent with the lead-in in subsection (E)(1). Thus, the rule applies equally, regardless of how dispatching is done.

		The Department does not plan to make any other change to the rules based on the comment.
m	A concern was expressed about the reporting methodology for the Ambulance Revenue and Cost Report (ARCR) in R9-25-909, especially related to governmental entities.	The content of R9-25-909 is unchanged from the Exhibits that have been in the rules for over 20 years. It was not the intention in this rulemaking to make changes to the ARCR, just to put the current content into text, rather than in Exhibits. The ARCRs are submitted annually, according to A.R.S. § 36-2232(A)(8), and are used to compare one certificate holder to another when setting rates, and for other purposes. Therefore, all information needs to be provided in a uniform format, regardless of how normal accounting is done for the ground ambulance service. The Department does not plan to make any other change to the rules based on the comment.
n	A concern was expressed about requirements for uniform rates.	See the response to comment (1)(g). Because the Department does not have the authority to prevent a certificate holder under a uniform public rate from requesting a different rate, just authority to approve or deny the request, the new rules do contain a mechanism for a certificate holder to opt out of a uniform public rate. The Department does not plan to make any other change to the rules based on the comment.
o	A concern was expressed about the rate of return in R9-25-1106.	See the response to comment (1)(h).
p	A concern was expressed about periodic review by the Department of rates and charges.	See the response to comment (1)(h).
q	A comment was made that these rules require more stakeholder involvement and input, and that only those requirements in HB 2609 should go forward.	This rulemaking was begun in 2019 and included multiple drafts, extensive comments from stakeholders, and many stakeholder meetings to develop the new rules. For Article 9, seven sets of draft rules have been posted for comment and discussed during 14 meetings. For Article 10, four drafts were posted and two meetings held. Only one draft each has been posted for Articles 11 and 12 and the ARCR. A consolidated draft containing all the Articles was also posted for comment. Throughout the rulemaking process, changes have been made to drafts based on stakeholder input. While the Department is willing to continue the discussion of some issues in a subsequent rulemaking, the Department believes that there has been more than adequate input so far and that most elements of the proposed rules are not of concern. The Department hopes that this rulemaking will be approved as shown in this Notice, with the understanding that additional changes may be made through a subsequent

		regular rulemaking to address any outstanding stakeholder concerns.
7	The following comments were received from the Arizona Hospital and Healthcare Association:	
a	The commenter thanked the Department for the outreach during the rulemaking and for listening to member concerns.	The Department thanks the commenter.
b	A comment was made that the CON system “constitutes monopolies or near monopolies in all areas of the state,” and further stated that “[i]t is inexcusable that agencies granted this monopoly are permitted to “park” patients in an emergency department when those patients are in a medical crisis and require transportation to a higher level of care or specialty hospital.” Because the current rules do not contain a mechanism for the Department to address “non-compliance with appropriate, evidence-based, standards of care,” “[i]t is imperative that the CON process include accountability measures [for interfacility transports] in order to safeguard the public.”	The Department believes that the Department has the statutory authority to regulate the performance of interfacility transports, but has been unable to do so under the current rules, despite receiving multiple concerns and complaints over the years. The Department believes that the proposed rules provide a mechanism to protect patients with time-critical conditions, as well as to collect interfacility transport data for those patients without a time-critical condition, to better assess the extent and seriousness of the issue of the performance of interfacility transports. While acknowledging that the proposed rules do not go as far as some hospital stakeholders would like, the Department has tried to strike a balance between the benefit some stakeholders would receive without undue burden being put on other stakeholders.  The Department does not plan to change the rules based on the comment.
c	A comment was made that some members had originally had concerns about proposed revisions, but that the proposed rules “strikes a compromise for all parties.” The comment was made that “AzHHA strongly recommends that ADHS finalize the revisions to Article 9 as proposed in the NOPR.”	The Department thanks the commenter for the support.
8	The following comments were received from the Dignity Healthcare System:	
a	The comment was made that “Dignity Health is pleased to offer this letter of support to the Ground Ambulance Rules proposed in Articles 9, 10, 11 and 12.”	The Department thanks the commenter for the support.
b	A comment was made that Dignity Health facilitates more than 20,000 interfacility transports per year, and that “the lack of transparency, performance expectations and	The Department understands these concerns and has included in the rules mechanisms to try to address them without imposing an undue burden on ground ambulance services.

	evidence-based data has seriously impacted patient care.”	
c	A comment was made that including a definition of “time-critical condition” with related requirements will greatly improve the health of these critically ill patients who would be harmed by delays in receiving appropriate treatment.	The Department agrees.
d	A comment was made that a certificate holder’s contention that “if an ambulance provider received a dispatch for an IFT [interfacility transfer] with a time-critical condition and a 9-1-1 dispatch at the same time, the ambulance provider will be forced to choose” demonstrates “the lack of clinical understanding and gravity of “time-critical conditions” as the patient’s needs are immediate and life-threatening. Under this scenario, the ambulance provider should provide an ambulance in BOTH situations.’	The Department agrees.
e	A comment was made that Dignity Health supports the changes in R9-25-906 and R9-25-907 that make “the quality of patient care a priority that must be weighed” by the Department when making a decision and “establishes specific data elements to be collected and analyzed for the purpose of establishing response times and compliance.”	The Department thanks the commenter for the support.
f	A comment was made that Dignity Health supports the changes in R9-25-908(E)(3) and (K)(2), but urges the Department to audit dispatches periodically to ensure that “ambulance providers are providing accurate reported data.”	The Department thanks the commenter for the support.
g	A comment was made that Dignity Health supports the changes in R9-25-1005 related to the installation of global positioning devices in ambulances, as required by statute, and the requirements for requesting a	The Department thanks the commenter for the support. The Department believes that there are many reasons that may cause a certificate holder to request a waiver, and the rules do not list what those reasons would have to be. The Department had received feedback from several stakeholders that it would be easier and more efficient to request a waiver

	waiver that is not permanent. However, the commenter “recommends a more restrictive waiver such as a ‘one-time temporary waiver of not more than 30 days.”	when an application for ambulance vehicle registration is submitted. The proposed rules better align requests for waiver with annual registrations, based on this feedback, to reduce the financial burden on certificate holders.
The following were provided as oral comments during the Oral Proceeding held on October 16, 2023, then later as written comments.		
9	The following comments were provided on behalf of Global Medical Response:	
a	A comment was made that the rulemaking be bifurcated to include only those changes required by HB 2609 in one rulemaking and everything else in another. While acknowledging that the bifurcation would lead to a two-month delay in rules related to HB 2609, the commenter stated that this should not be a reason “to implement rules that have major opposition from the ambulance providers.”	The Department disagrees. The current rules have been in place for over 20 years and are badly in need of revision, as identified in two successive five-year-review reports. The Department has worked with stakeholders since 2019 on these rules and made many changes to better accommodate ground ambulance services. The Department believes that most of the changes unrelated to HB 2609 are not points of contention, and many reflect stakeholder suggestions. The few issues being brought up have been discussed, wording drafted, revisions made, and further discussed. The Department is willing to continue to discuss these few issues and refine the requirements, but believes that these few issues should not cause the rulemaking to be delayed.
b	The comment was made that only a few changes are required by HB 2609: - a definition of “response time” to mirror what is in statute; - the following content of the proposed R9-25-907: subsections (A)(1) through (3); subsection (B), with the revision of subsection (B)(9); and subsection (C), with the removal any mention of uniform standards; - the content of the proposed R9-25-908 (G)(1) and (3), specific to 9-1-1 calls; - the content of R9-25-1005(C)(2); and - the content of R9-25-1005(E), but as a permanent waiver.	The Department agrees that only a few changes are specifically required by HB 2609, if the statutory requirement for including quality patient care in decision-making is ignored. That is one reason for the Department’s decision to include them in the rulemaking that had been ongoing for three years at the time that HB 2609 was adopted, with only a few issues outstanding at the time. As discussed above, the interfacility transport of a patient with a time-critical condition meets the statutory definition of an “emergency ambulance transport” and may be requested through a designated telephone number to reach a public safety answering point. Therefore, the Department believes that ambulance stakeholders were correct in requesting that these transports be included under the dispatches for which a response time is applicable. They would also be subject to the other requirements related to response times, which were not included in the commenter’s proposed content. Nor are changes that reflect the emphasis on the provision of quality patient care, which are embedded throughout the proposed rules.
c	Regarding other changes, comments were made that: - the criteria for obtaining a waiver should be identified;	The Department deliberately left the requirement for providing a “reason and justification for the waiver” broad, because there could be many reasons besides connectivity issues or financial issues that could be applicable, and the

		Department did not want to prevent a waiver being granted on the basis of an unanticipated issue.
	- the definition of “response time” should not include interfacility transports, as it lacks statutory authority;	See the responses to comments (1)(b), (6)(h), (7)(b), (8)(b) and (d), and (9)(b).
	- the current definitions of “urban area,” “suburban area,” “rural area,” and “wilderness area” should be retained;	See the response to comment (1)(a). Under the proposed rules all areas of a city would be considered an “urban area” (except a small city/town of less than 10,000 people, which would be considered a “rural area”), so the neighbor on the other side of the street in a city or town would have the same response time.
	- in R9-25-907(C)(1), developing a set of uniform standards for response times lacks statutory authority;	The Department disagrees. The development of historical response time data, while aggregated on the basis of scene locality, reflects the realities of geography and medical considerations in the areas in which the transport occurred. In addition, as specified in R9-25-907(C)(3), establishing a response time would include consideration of not only the historical data, in the form of the uniform standard, but also other factors specified in subsection (B). These include population demographics, geographic features and environmental conditions, and the geographic distribution of health care institutions within and surrounding the service area or proposed service area. Thus, the factors the statute requires to be considered would be included.
	- all references to interfacility transport response times must be removed because they lack statutory authority;	The Department disagrees. See the responses to comments (1)(b), (6)(h), (7)(b), (8)(b) and (d), and (9)(b).
	- the critical care rate definition should not mention specialty care transports and state that it should be greater than the ALS base rate;	See the response to comment (1)(c).
	- there are concerns about including provisions for joining or leaving a uniform rate group; and	See the responses to comments (1)(g) and (6)(n).
	- there are concerns about the changes to R9-25-1106(C).	See the response to comment (1)(h).
10	The following comments were provided on behalf of Guardian Medical Transport:	
a	A comment was made that HB 2609 can only be applied to initial and amended certificates of necessity.	See the responses to comments (6)(b) and (d).
b	A comment was made that “[r]esponse times, as written in the current proposed rules, is not clear and leads to	The Department disagrees that requirements related to response times are unclear. Criteria and factors to be considered are spelled out, as is the methodology the

	speculation as to what are uniform and fair response times,” recommending that they should continue being discussed under exempt rulemaking in 2024.	Department plans to use, which reflects current practice but is not in the current rules. If issues arise after the rules are implemented, the Department would certainly address them under the exempt rulemaking authority granted by HB 2609 for 12 months after January 1, 2024.
c	A comment was made that interfacility transports should not come under the response time requirements.	See the responses to comments (1)(b), (6)(h), (7)(b), (8)(b) and (d), and (9)(b).
d	A comment was made that the definition of “scene locality” is unclear.	See the responses to comments (1)(a) and (6)(f).
e	A comment was made that the definition of “critical care rate” needs to specify that it be greater than the ALS base rate.	See the response to comment (1)(c).
f	The comment was made that the requirements for dispatch records in R9-25-908(J)(2) should state that the information is only required “as available.”	Many of the elements in R9-25-908(J)(2) are required in the current rules in R9-25-910(B)(8) to be maintained by a certificate holder. Others are required so that response times can be calculated. All are fairly basic and necessary to assess performance. The Department will work with certificate holders to ensure that any information required can be collected and submitted as required to the Department.
The following oral comments were provided during the Oral Proceeding held on October 16, 2023.		
11	The following comment was provided by a representative of ABC Ambulance:	
	A comment was made that the commenter is looking for three things in a rule: is it in the public’s best interest, is it not arbitrary, and does it apply to all certificate holders. A concern was expressed about R9-25-1108(B), stating that it seems arbitrary and does not apply to everyone.	The Department disagrees that R9-25-1108 is arbitrary or that it does not apply to everyone. As stated above, R9-25-1108(B) clarifies the ability of the Department under statute to “[d]etermine, fix, <b>alter</b> and regulate just, reasonable and sufficient rates and charges.” As such, the review applies to all certificate holders, although not many rates and charges are likely to need adjustment, as indicated by the inclusion of “if appropriate.” To further clarify and add to the statutory authority, the Department plans to add a citation to A.R.S. § 36-2232(A)(4), since a review of response times may result in changes, which could have a financial impact (as anticipated in statute) and lead to a need to alter rates and charges.
12	The following comment was provided by a representative of the Arizona Ambulance Association and Golder Ranch Fire District:	
	In addition to the comments submitted as written comment set (6), a comment was made that the Association supports the changes needing to be made to implement HB 2609, but that other changes in the rules “are being	The Department stated during the Oral Proceeding that removing anything that is not specific to HB 2609 would constitute a substantive change and cause at least a two-month delay in the submission of a Notice of Final Rulemaking to GRRC. This Notice would also be in conflict with the plan of action that the department gave to GRRC as

	<p>pushed through. There is no time-line to implement them.” A request was made to only implement requirements associated with HB 2609 and continue working on other parts of the rule.</p>	<p>part of two five-year-review reports. If changes are needed to rules addressing changes made by HB 2609, the Department has stated repeatedly, that an exempt rulemaking would be initiated, with the Governor’s approval, to address them. Similarly, unresolved issues could be further discussed and tweaked as part of a subsequent regular rulemaking, given the Governor’s approval.</p>
13	<p>The following comments were provided by a representative of American Medical Response:</p>	
	<p>Two handouts were distributed, the first containing suggested wording to address elements of HB 2609, and the second listing concerns about other parts of the rulemaking. These handouts were also submitted as written comments, included as comment set (9).</p> <p>The commenter asked that the rules be bifurcated because “some is arbitrary and capricious, some has no statutory authority, some is very expensive.” The commenter reviewed the content of the handouts. Concerns were expressed about the definition of “response time,” inclusion of interfacility transports in R9-25-907(A), development of uniform standards for response times in R9-25-907(C), and requiring an annual waiver. The concerns in comment set (9)(c) were also reviewed.</p>	<p>The Department disagrees. Not just 9-1-1 calls can go through a public safety answering point (PSAP), as seen in the statutory definition of “emergency ambulance services” in A.R.S. § 20-2801. See also the response to comment (1)(b) regarding the statutory authority to regulate interfacility transports. See also the responses to comment set (9).</p>
14	<p>The following comments were provided by a representative of Health Care Innovations, Inc. in Cochise County:</p>	
	<p>A comment was made that “[i]nterfacility transport oversight reporting has no reason to be in rule and regulation.” The commenter was concerned about a doctor, nurse, other provider making a determination that a patient has a time-critical condition without knowing what else is going on in the CON “is outlandish.” Reporting will be expensive to small rural providers.</p>	<p>The Department believes that the individual actually providing services to a patient is in the best position to determine whether a patient has a time-critical condition. See also comment (8)(d). For the interfacility transport of a patient with no time-critical condition, the rules allow for a certificate holder to provide an amended estimated time of arrival if conditions, such as multiple 9-1-1 calls or other situations, occur that would prevent the timely arrival of an interfacility transport. The Department intends to make reporting as easy as possible to reduce the burden on all ground ambulance services.</p>
15	<p>The following comments were provided by a representative of Public Policy Partners, which also submitted comment set (1) on behalf of clients including American Medical Response:</p>	

a	A comment was made that the Department has exempt rulemaking authority now to implement the requirements in HB 2609.	The Department disagrees. HB 2609 states that the Department is exempt from rulemaking requirements in Title 4, Chapter 6 “for one year after the effective date of this act.” The act “is effective from and after December 31, 2023.”
b	A question was asked about the purpose of the meeting if nothing will be done on the basis of comments received.	The Department is able to make clarifying changes to the proposed rules, as long as the changes are not substantive. As described above, the Department plans to make some clarifying changes on the basis of comments received. A great many changes have been made in drafts posted and discussed since 2019 on the basis of stakeholder comments. The Department disagrees with some comments made during the informal rulemaking process, has worked to make the requirements fair to all stakeholders, and has tried to make the rules something that everyone can live with. Ambulance services are not the only stakeholders. To address issues that some ambulance services have concerns about, the Department is willing to conduct subsequent rulemakings, exempt for HB 2609 issues and regular for other issues, to attempt to improve consensus.
c	The comment was made that the rulemaking should be bifurcated and everything not required by HB 2609 be taken out of the rulemaking going to GRRC.	As stated before, the Department cannot make a substantive change to the proposed rules without filing a Notice of Supplemental Proposed Rulemaking, which would delay the submission of a Notice of Final Rulemaking to GRRC by at least two months. The Notice of Final Rulemaking would also not satisfy the commitment the Department gave to GRRC to address the issues identified in the five-year-review reports.
d	A comment was made that the Department does not have the statutory authority to make some of the changes in the proposed rules. Recent changes in A.R.S. Title 41 were cited as requiring statutory authority for a rule requirement. A statement was also made that the Department does not have authority to regulate hospitals.	The Department disagrees and believes there is statutory authority for everything in the proposed rules, as discussed above. With respect to the statement that the Department does not have statutory authority to regulate hospitals, the Department again disagrees, since A.R.S. Title 36, Chapter 4, gives the Department statutory authority to regulate health care institutions, and hospitals represent a class of health care institution.
e	A comment was made that exempt rulemaking authority only applies to things covered under HB 2609.	The Department agrees, as stated above.
16	The following comments were provided by a representative of the Mesa Fire Department and the Arizona Ambulance Association:	
a	A comment was made that most ambulance services do not think that the rules are being rushed, stating that it has been a very long process and	The Department thanks the commenter.

	expressing appreciation for engaging stakeholders early and often.	
b	A comment was made that stakeholders are very diverse. Even among ambulance services, interests of one may be different from interests of another.	The Department agrees.
c	From the Mesa Fire Department standpoint, the commenter stated there were no concerns. From the Association's standpoint, the commenter stated that some have concerns about the GPS requirements and the waiver and want clarification.	The Department will work with and provide technical assistance to those who have questions about implementation of the GPS requirement. As stated in the responses to comments (1)(f) and (6)(a), the reasons for requesting a waiver may include other concerns besides connectivity or financial concerns, so the rules just require some reason and justification for the waiver. The annual timing for requesting the waiver was added at the suggestion of stakeholders who thought it would be better to request the waiver when submitting an application for registering the ambulance.
d	The statement was made that if interfacility transports are not working, it will impact the 9-1-1 side of operations. The commenter expressed appreciation for tying them into the rules.	The Department agrees and thanks the commenter.
17	The following comments were provided by a representative of the Arizona Hospital and Healthcare Association, which also submitted comment set (7):	
a	A comment was made thanking the Department for the collaboration in developing these rules, stating that the rulemaking has been going on for a very long time and has not been rushed.	The Department agrees and thanks the commenter.
b	A comment was made that there have been consistent and increasing concerns expressed by members about the time delays for interfacility transports. There is no mechanism for collecting data, evaluating performance, or holding certificate holders responsible for providing a standard of care. The comment was made that it is very important to have these quality assurance methods to safeguard the public.	The Department agrees. The Department has also received complaints and concerns about the performance of interfacility transports. Under the current rules, however, there is very little the Department can do. See also the responses to comments (1)(b), (6)(h), and (8)(b).

c	A comment was made that, although the requirements for interfacility transports do not go as far as some members would like, they do strike a balance in minimizing the burden on certificate holders. They reflect the Department intention that the most medically fragile patients, whether held in an emergency department or in the field, receive appropriate treatment in a timely manner.	The Department agrees and thanks the commenter. The Department believes that, in establishing parameters for the performance of interfacility transports and in gathering information about them, the Department will be able to better target efforts to improve patient care and the safety of patients and the public.
18	The following comments were provided by a representative of Guardian Medical Transport:	
a	A comment was made that this rulemaking has taken cliff notes and transformed them into a book. However, some things are still unclear.	The Department is happy to try to clarify anything that is unclear.
b	The comment was made that HB 2609 only applies to initial and amended certificates of necessity. Requirements based on HB 2609 would not be applicable to existing certificate holders.	See the responses to comments (6)(b) and (6)(d).
c	Concerns were expressed about response times, interfacility transports, scene locality, critical care rate, and dispatch records.	See the responses to the comments above.
19	The following comments were provided by a representative of Health Care Innovations, Inc.:	
	A comment was made that there is “a lot of finger-pointing between hospitals and ambulance services. .... We need to start working together so you are not holding us up, and we are not holding you up.” The commenter also stated that they “have a great relationship with our two hospitals.”	The Department thanked the commenter for the comment.

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

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

A general permit is not applicable under A.R.S. § 41-1037(A)(2). The Department issues certificates of necessity under A.R.S. §§ 36-2202(A), 36-2232, 36-2233, 36-2236, and

36-2240, and registers and renews registration of ground ambulance vehicles under A.R.S. §§ 36-2212, 36-2232, and 36-2240.

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

Not applicable

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

No such analysis was submitted.

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

No incorporations by reference are included in the rulemaking.

- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable

- 15. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 25. DEPARTMENT OF HEALTH SERVICES**  
**EMERGENCY MEDICAL SERVICES**

**ARTICLE 1. GENERAL**

Section

R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)

**ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY**

Section

R9-25-901. Definitions (Authorized by A.R.S. § 36-2202(A))

R9-25-902. Application for an Initial Certificate of Necessity; ~~Provision of ALS Services; Transfer of a Certificate of Necessity~~ (Authorized by A.R.S. §§ 36-2201(11)(h), 36-2204, 36-2232, ~~36-2233(B)~~ 36-2233, 36-2234, 36-2236(A) ~~and (B)~~, 36-2240)

~~R9-25-904~~ R9-25-903. Application for Renewal of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2233, 36-2235, 36-2238, 36-2240, 36-2242)

R9-25-904. Transfer of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2232, 36-2233, 36-2236(A) and (B), 36-2238)

R9-25-905. Application for Amendment of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2232(A)(4) 36-2232, 36-2240, 36-2247)

~~R9-25-903~~ R9-25-906. Determining Public Necessity (Authorized by A.R.S. § 36-2233(B)(2) 36-2233(F))

~~R9-25-907~~. ~~Observance of Service Area; Exceptions (A.R.S. § 36-2232)~~

~~R9-25-906~~ R9-25-907. Determining Response Times, ~~Response Codes~~ Priority for Responses, and Response-Time Tolerances for Certificates of Necessity and Provision of ALS Services Compliance with Specified Times (Authorized by A.R.S. §§ 36-2232, 36-2233, 36-2236)

R9-25-908. ~~Transport Requirements; Exceptions (A.R.S. §§ 36-2224, 36-2232)~~

R9-25-908. Operations (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5), 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

~~R9-25-909~~. ~~Certificate of Insurance or Self Insurance (A.R.S. §§ 36-2232, 36-2233, 36-2237)~~

~~R9-25-910~~ R9-25-909. Record and Ambulance Revenue and Cost Reporting Requirements (Authorized by A.R.S. §§ 36-2232, 36-2241, 36-2246)

R9-25-910. Inspections and Investigations (Authorized by A.R.S. §§ 36-2204, 36-2212, 36-2232, 36-2241, 36-2245)

~~R9-25-911~~. ~~Ground Ambulance Service Advertising (A.R.S. § 36-2232)~~

~~R9-25-912~~ R9-25-911. Disciplinary Enforcement Action (Authorized by A.R.S. §§ 36-2234(L), 36-2244,

36-2245, 41-1092.03, 41-1092.11(B))

R9-25-912. Renumbered

Exhibit 9A ~~Ambulance Revenue and Cost Report, General Information and Certification~~ Repealed

Exhibit 9B ~~Ambulance Revenue and Cost Report, Fire District and Small Rural Company~~ Repealed

## **ARTICLE 10. GROUND AMBULANCE VEHICLE REGISTRATION**

### Section

R9-25-1001. Initial and Renewal Application for a Certificate of Registration (Authorized by A.R.S. §§ 36-2212, 36-2232, 36-2240)

R9-25-1002. Term and Transferability of Certificates of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)

~~R9-25-1003. Minimum Equipment and Supplies for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))~~

R9-25-1003. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2238, and 36-2247)

~~R9-25-1004. Minimum Staffing Requirements for Ground Ambulance Vehicles (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5))~~

R9-25-1004. Ground Ambulance Vehicle Inspections (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2232(A)(11), and 36-2241)

~~R9-25-1005. Ground Ambulance Vehicle Inspection; Major and Minor Defects (A.R.S. §§ 36-2202(A)(5), 36-2212, 36-2232, 36-2234)~~

~~R9-25-1002~~R9-25-1005. Minimum Standards for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))

R9-25-1006. ~~Ground Ambulance Vehicle Identification (A.R.S. §§ 36-2212, 36-2232)~~ Repealed

Table 10.1. Major and Minor Defects (Authorized by A.R.S. §§ 36-2202(A)(5), 36-2212, 36-2232, 36-2234)

Table 10.2. Minimum Equipment and Supplies for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))

## **ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS**

### Section

R9-25-1101. ~~Application for Establishment of~~ Establishing Initial General Public Rates (Authorized by A.R.S. §§ 36-2232, 36-2239)

R9-25-1102. Application for Adjustment of General Public Rates (Authorized by A.R.S. §§ 36-2234, 36-2239)

R9-25-1103. Application for a Contract Rate or Range of Rates Less than General Public Rates (A.R.S.

§§ ~~36-2234(G) and (H)~~ 36-2234(I) and (K), 36-2239)

- R9-25-1104. Ground Ambulance Service Contracts (A.R.S. §§ 36-2232, ~~36-2234(K)~~ 36-2234(M))
- R9-25-1105. Application for Provision of Subscription Service or to Establish a Subscription Service Rate (A.R.S. § 36-2232(A)(1))
- R9-25-1106. Rate of Return Setting Considerations (A.R.S. §§ 36-2232, 36-2239)
- R9-25-1107. Rate Calculation Factors (A.R.S. § 36-2232)
- R9-25-1108. Implementation of Rates and Charges (A.R.S. §§ 36-2232, 36-2239)
- R9-25-1109. Charges (A.R.S. §§ 36-2232, 36-2239(D))
- R9-25-1110. Invoices (A.R.S. §§ 36-2234, 36-2239)

**ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS**

Section

- R9-25-1201. Time-frames (Authorized by A.R.S. §§ 41-1072 through 41-1079)
  - Table 12.1. Time-frames (in days)

## ARTICLE 1. GENERAL

### **R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)**

In addition to the definitions in A.R.S. § 36-2201, the following definitions apply in this Chapter, unless otherwise specified:

1. “Administer” or “administration” means to directly apply or the direct application of an agent to the body of a patient by injection, inhalation, ingestion, or any other means and includes adjusting the administration rate of an agent.
2. “AEMT” has the same meaning as “advanced emergency medical technician” in A.R.S. § 36-2201.
3. “Agent” means a chemical or biological substance that is administered to a patient to treat or prevent a medical condition.
4. “ALS” has the same meaning as “advanced life support” in A.R.S. § 36-2201.
5. “ALS base hospital” has the same meaning as “advanced life support base hospital” in A.R.S. § 36-2201.
6. “Applicant” means a person requesting certification, licensure, approval, or designation from the Department under this Chapter.
7. “BLS” has the same meaning as “basic life support” in A.R.S. § 36-2201.
- ~~7-8.~~ “Chain of custody” means the transfer of physical control of and accountability for an item from one individual to another individual, documented to indicate the:
  - a. Date and time of the transfer,
  - b. Integrity of the item transferred, and
  - c. Signatures of the individual relinquishing and the individual accepting physical control of and accountability for the item.
- ~~8-9.~~ “Chief administrative officer” means:
  - a. For a hospital, the same as in A.A.C. R9-10-101; and
  - b. For a training program, an individual assigned to act on behalf of the training program by the body organized to govern and manage the training program.
- ~~9-10.~~ “Clinical training” means experience and instruction in providing direct patient care in a health care institution.
- ~~10-11.~~ “Controlled substance” has the same meaning as in A.R.S. § 32-1901.
- ~~11-12.~~ “Course” means didactic instruction and, if applicable, hands-on practical skills training, clinical training, or field training provided by a training program to prepare an individual to become or remain an EMCT.

- ~~12-13.~~ “Course session” means an offering of a course, during a period of time designated by a training program certificate holder, for a specific group of students.
- ~~13-14.~~ “Current” means up-to-date and extending to the present time.
- ~~14-15.~~ “Day” means a calendar day.
- ~~15-16.~~ “Document” or “documentation” means signed and dated information in written, photographic, electronic, or other permanent form.
- ~~16-17.~~ “Drug” has the same meaning as in A.R.S. § 32-1901.
- ~~17-18.~~ “Electronic signature” has the same meaning as in A.R.S. § 44-7002.
- ~~18-19.~~ “EMCT” has the same meaning as “emergency medical care technician” in A.R.S. § 36-2201.
- ~~19-20.~~ “EMT” has the same meaning as “emergency medical technician” in A.R.S. § 36-2201.
- ~~20-21.~~ “EMT-I(99)” means an individual, other than a Paramedic, who:
- a. Was certified as an EMCT by the Department before January 28, 2013 to perform ALS, and
  - b. Has continuously maintained the certification.
- ~~21-22.~~ “EMS” has the same meaning as “emergency medical services” subsections (17)(a) through (d) in A.R.S. § 36-2201.
- ~~22-23.~~ “Field training” means emergency medical services experience and training outside of a health care institution or a training program facility.
- ~~23-24.~~ “General hospital” has the same meaning as in A.A.C. R9-10-101.
- ~~24-25.~~ “Health care institution” has the same meaning as in A.R.S. § 36-401.
- ~~25-26.~~ “Hospital” has the same meaning as in A.A.C. R9-10-101.
- ~~26-27.~~ “In use” means in the immediate physical possession of an EMCT and readily accessible for potential imminent administration to a patient.
- ~~27-28.~~ “Infusion pump” means a device approved by the U.S. Food and Drug Administration that, when operated mechanically, electrically, or osmotically, releases a measured amount of an agent into a patient’s circulatory system in a specific period of time.
- ~~28-29.~~ “Interfacility transport” means an ambulance transport of a patient from one health care institution to another health care institution.
- ~~29-30.~~ “IV” means intravenous.
- ~~30-31.~~ “Locked” means secured with a key, including a magnetic, electronic, or remote key, or combination so that opening is not possible except by using the key or entering the combination.
- ~~31-32.~~ “Medical direction” means administrative medical direction or on-line medical direction.

- ~~32~~33. “Medical record” has the same meaning as in A.R.S. § 36-2201.
- ~~33~~34. “Minor” means an individual younger than 18 years of age who is not emancipated.
- ~~34~~35. “Monitor” means to observe the administration rate of an agent and the patient’s response to the agent and may include discontinuing administration of the agent.
- ~~35~~36. “On-line medical direction” means emergency medical services guidance or information provided to an EMCT by a physician through two-way voice communication.
- ~~36~~37. “Patient” means an individual who is sick, injured, or wounded and who requires medical monitoring, medical treatment, or transport.
- ~~37~~38. “Pediatric” means pertaining to a child.
- ~~38~~39. “Person” has the same meaning as in A.R.S. § 1-215 and includes governmental agencies.
- ~~39~~40. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
- ~~40~~41. “Practical nurse” has the same meaning as in A.R.S. § 32-1601.
- ~~41~~42. “Practicing emergency medicine” means acting as an emergency medicine physician in a hospital emergency department.
- ~~42~~43. “Prehospital incident history report” has the same meaning as in A.R.S. § 36-2220.
- ~~43~~44. “Refresher challenge examination” means a test given to an individual to assess the individual’s knowledge, skills, and competencies compared with the national education standards established for the applicable EMCT classification level.
- ~~44~~45. “Refresher course” means a course intended to reinforce and update the knowledge, skills, and competencies of an individual who has previously met the national educational standards for a specific level of EMS personnel.
- ~~45~~46. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.
- ~~46~~47. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.
- ~~47~~48. “Scene” means the location of the patient to be transported or the closest point to the patient at which an ambulance can arrive.
- ~~48~~49. “Special hospital” has the same meaning as in A.A.C. R9-10-101.
- ~~49~~50. “STR skill” means “Specialty Training Requirement skill,” a medical treatment, procedure, or technique or administration of a medication for which an EMCT needs specific training beyond the training required in 9 A.A.C. 25, Article 4 in order to perform or administer.
- ~~50~~51. “Transfer of care” means to relinquish to the control of another person the ongoing medical treatment of a patient.
- ~~51~~52. “Transport agent” means an agent that an EMCT at a specified level of certification is authorized to administer only during interfacility transport of a patient for whom the agent’s administration was started at the sending health care institution.



## ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

### R9-25-901. Definitions (Authorized by A.R.S. § 36-2202 (A))

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in Articles 9, 10, 11, and 12 unless otherwise specified:

1. “Accounting period” means a continuous 12-month span of time used by an applicant or a certificate holder for purposes of planning, budgeting, or annual financial reporting to the Department.
- ~~1-2.~~ “Adjustment” means a modification, correction, or alteration to a rate or charge.
- ~~2-3.~~ “ALS base rate” means the monetary amount ~~assessed to~~ set by the Department for a certificate holder to bill a patient according to A.R.S. § 36-2239(F).
4. “Ambulance response” means EMS provided by a ground ambulance service.
- ~~3-5.~~ “Ambulance Revenue and Cost Report” means ~~Exhibit A or Exhibit B~~ the information required in R9-25-909, which records and reports the financial activities of an applicant or a certificate holder.
- ~~4-6.~~ “Application packet” means the ~~fee, information, applicable fees, and documents, forms, and additional information~~ required by the Department requires to be submitted by an applicant or on an applicant’s behalf when making a decision for certification, licensure, or approval of a request.
- ~~5-7.~~ “Back-up agreement” means a written arrangement, which may include one of the following, between a certificate holder and a neighboring or overlapping certificate holder for temporary coverage during limited times when the neighboring certificate holder’s ambulances are not available for service to allow one of the certificate holders to provide ambulance response or transport within the other certificate holder’s service area on a limited basis when the certificate holder’s ambulances are temporarily not able to provide needed services in it’s the certificate holder’s service area:
  - a. A mutual aid agreement, or
  - b. A Memorandum of Understanding.
- ~~6-8.~~ “BLS base rate” means the monetary amount ~~assessed to~~ set by the Department for a certificate holder to bill a patient according to A.R.S. § 36-2239(G).
- ~~7-9.~~ “Certificate holder” means a person to whom the Department issues a certificate of necessity.
- ~~8-10.~~ “Certificate of registration” means an authorization issued by the Department to a certificate holder to operate a ground ambulance vehicle.

- 9-11. “Change of ownership” means a transfer of controlling legal or controlling financial interest and authority in a ground ambulance service, as demonstrated according to R9-25-904(A)(1):
- a. ~~In the case of ownership by a sole proprietor, 20% or more interest or a beneficial interest is sold or transferred;~~
  - b. ~~In the case of ownership by a partnership or a private corporation, 20% or more of the stock, interest, or beneficial interest is sold or transferred; or~~
  - c. ~~The controlling influence changes to the extent that the management and control of the ground ambulance service is significantly altered.~~
- ~~10-12.~~ “Charge” means the monetary amount assessed to a patient billed for disposable supplies, medical supplies, medication, and oxygen-related costs used in providing care to a patient.
- ~~11-13.~~ “Chassis” means the part of a ground ambulance vehicle consisting of all base components, including front and rear suspension, exhaust system, brakes, engine, engine hood or cover, transmission, front and rear axles, front fenders, drive train and shaft, fuel system, engine air intake and filter, accelerator pedal, steering wheel, tires, heating and cooling system, battery, and operating controls and instruments.
14. “Controlling person” means an individual who:
- a. Owens at least a 20% interest in the business organization that operates or is applying to operate as a ground ambulance service;
  - b. If an applicant or certificate holder is a partnership, is a general partner or is a limited partner who holds at least 20% of the voting rights of the partnership;
  - c. If an applicant or certificate holder is a corporation, association, or limited liability company, is the president, chief executive officer, or incorporator, or an individual who owns or controls at least 20% of the voting securities; or
  - d. Is responsible for the overall day-to-day management and operation of the ground ambulance service.
15. “Contract rate or range of rates” means the monetary amount established by the Department according to R9-25-1103.
- ~~12.~~ “Convalescent transport” means a scheduled transport other than an interfacility transport.
16. “Convalescent transport” means a ground ambulance service’s response to a request for ambulance response or transport that is:
- a. Not an interfacility transport, and
  - b. Pre-arranged to occur at a specific time.
17. “Critical care rate” means the monetary amount that is set by the Department for a certificate

holder to bill a patient for critical care services.

- ~~18.~~ 18. “Critical care services” means care provided during an interfacility transport to a patient who has an illness or injury acutely or chronically impairing one or more organ systems, such that the conditions are life-threatening and require constant monitoring to avoid deterioration of the patient’s condition.
- ~~13-19.~~ 19. “Dispatch” means the direction to a ~~ground ambulance service or vehicle~~ certificate holder or an emergency medical services provider to respond to a call for EMS ambulance response or transport.
- ~~14-20.~~ 20. “Driver’s compartment” means the part of a ground ambulance vehicle that contains the controls and instruments for operation of the ground ambulance vehicle.
- ~~15-21.~~ 21. “Financial statements” means an applicant’s balance sheet, annual income statement, and annual cash flow statement, or corresponding documents if applicable to the type of business organization, prepared according to the conventions, and rules and procedures for accounting, including broad and specific guidelines, established by the Financial Accounting Standards Board or the Governmental Accounting Standards Board.
- ~~16-22.~~ 22. “Frame” means the structural foundation on which a ground ambulance vehicle chassis is constructed.
- ~~17-23.~~ 23. “General public rate” means the monetary amount ~~assessed to~~ set by the Department for a certificate holder to bill a patient by a ground ambulance service for critical care services, ALS services, BLS services, mileage, standby waiting, or according to a subscription service contract.
- ~~18-24.~~ 24. “Generally accepted accounting principles” means the conventions, and rules and procedures for accounting, including broad and specific guidelines, established by the Financial Accounting Standards Board.
- ~~19.~~ 19. “Goodwill” means ~~the difference between the purchase price of a ground ambulance service and the fair market value of the ground ambulance service’s identifiable net assets.~~
- ~~20-25.~~ 25. “Gross revenue” means the total monetary amount billed by a certificate holder during an accounting period, prior to any deductions, for providing ambulance response or transport.
- a. The sum of revenues reported in the Ambulance Revenue and Cost Report Exhibit A, page 2, lines 1, 9, and 20; or
- b. The sum of revenues reported in the Ambulance Revenue and Cost Report Exhibit B, page 3, lines 1, 24, 25, and 26.
- ~~21-26.~~ 26. “Ground ambulance service” means an ambulance service that operates on land.
- ~~22-27.~~ 27. “Ground ambulance service contract” means a written agreement between a certificate

- holder and a person for the provision of ~~ground ambulance service~~ ambulance response or transport.
- ~~23-28.~~ “Ground ambulance vehicle” means a motor vehicle, defined in A.R.S. § 28-101, specifically designed to ~~transport~~ carry ambulance attendants and patients on land.
24. “Indirect costs” means the cost of providing ground ambulance service that does not include the costs of equipment.
25. “Interfacility transport” means a scheduled transport between two health care institutions.
- ~~26-29.~~ “Level of service” means critical care services, ALS services, or BLS services ~~ground ambulance service, including~~ based on the type of ambulance attendants ~~used~~ and the services provided by the ground ambulance service.
- ~~27-30.~~ “Major defect” means a condition that exists on a ground ambulance vehicle that ~~requires the Department or the certificate holder to place the ground ambulance vehicle out-of-service~~ makes the ground ambulance vehicle unsafe to use for providing transport.
- ~~28-31.~~ “Mileage rate” means the monetary amount ~~assessed to~~ set by the Department for a certificate holder to bill for transport of a patient for each mile traveled from the point of patient pick-up to the patient’s destination point during the transport.
- ~~29-32.~~ “Minor defect” means a condition that exists on a ground ambulance vehicle that ~~is not a major defect~~ may cause the ground ambulance vehicle to become unsafe to use for providing transport if allowed to continue.
30. “Needs assessment” means a study or statistical analysis that ~~examines the need for ground ambulance service within a service area or proposed service area that takes into account the current or proposed service area’s medical, fire, and police services~~.
- ~~31-33.~~ “Out-of-service” means a ground ambulance vehicle cannot be operated ~~to transport patients for transport~~.
- ~~32-34.~~ “Patient compartment” means the ~~part of a ground ambulance vehicle~~ body part that ~~holds~~ is intended to hold a patient during transport.
35. “Priority” means whether a response mode to a dispatch, on the basis of the information available to the certificate holder, is:
- a. Emergent, that is, an immediate response is required due to a patient’s perceived condition; or
  - b. Non-emergent, that is, a response is required at a time appropriate to a patient’s perceived condition.
- ~~33-36.~~ “Public necessity” means that a need exists within an identified population ~~needs or requires and service area for all or part of the services of a ground ambulance service proposed by an~~

applicant or determined by the Department.

~~34.37.~~ “Response code” means the priority assigned to a request for immediate dispatch by a ground ambulance service on the basis of the information available to the certificate holder or the certificate holder’s dispatch authority.

~~35.38.~~ “Response time” means the difference between the time a certificate holder is notified that a need exists for immediate receives:

a. A 9-1-1 or similar system dispatch and the time the certificate holder’s first ground ambulance vehicle arrives at the scene; or

b. A request for an interfacility transport of a patient with a time-critical condition and the time the certificate holder’s ground ambulance vehicle arrives at the health care institution to provide transport. Response time does not include the time required to identify the patient’s need, the scene, and the resources necessary to meet the patient’s need.

~~36.~~ “Response time tolerance” means the percentage of actual response times for a response code and scene locality that are compliant with the response time approved by the Department for the response code and scene locality, for any 12-month period.

~~37.~~ “Rural area” means a geographic region with a population of less than 40,000 residents that is not a suburban area.

~~38.39.~~ “Scene locality” means:

a. ~~an~~ An urban area, a geographic region delineated as an urbanized area by the United States Department of Commerce, Bureau of the Census;

b. A suburban area, a geographic region within a 10-mile radius of an urban area that has a population density equal to or greater than 1,000 residents per square mile;

c. A rural area, a geographic region with a population of less than 40,000 residents that is not a suburban area; or

d. A wilderness area, a geographic region that has a population density of less than one resident per square mile.

~~39.40.~~ “Scheduled transport” means to convey a patient at a prearranged time by a ground ambulance vehicle for which an immediate dispatch and response is not necessary.

~~40.41.~~ “Service area” means the geographical boundary designated ~~in~~ on a certificate of necessity using the criteria in A.R.S. § ~~36-2233(F)~~ 36-2233(I).

~~41.~~ “Settlement” means the difference between the monetary amount Medicare establishes or AHCCCS pays as an allowable rate and the general public rate a ground ambulance service assesses a patient.

42. “Standby waiting rate” means the monetary amount ~~assessed to~~ set by the Department for a certificate holder to bill a patient ~~by a certificate holder~~ when a ground ambulance vehicle is required to wait in excess of 15 minutes to load or unload the patient, unless the excess delay is caused by the ground ambulance vehicle or the ambulance attendants on the ground ambulance vehicle.
43. “Subscription service” means the provision of EMS ambulance response or transport by a certificate holder to a group of individuals within the certificate holder’s service area who contracted with the certificate holder for coverage to provide ambulance response or transport and the allocation of annual costs among the group of individuals.
44. “Subscription service contract” means a written agreement for subscription service.
45. “Subscription service rate” means the monetary amount ~~assessed~~ set by the Department for a certificate holder to bill to a person for coverage under a subscription service contract.
46. ~~“Substandard performance” means a certificate holder’s:~~
- ~~a. Noncompliance with A.R.S. Title 36, Chapter 21.1, Articles 1 and 2, or 9 A.A.C. 25, or the terms of the certificate holder’s certificate of necessity, including all decisions and orders issued by the Director to the certificate holder;~~
  - ~~b. Failure to ensure that an ambulance attendant complies with A.R.S. Title 36, Chapter 21.1, Articles 1 and 2, or 9 A.A.C. 25, for the level of ground ambulance service provided by the certificate holder; or~~
  - ~~e. Failure to meet the requirements in 9 A.A.C. 25, Article 10.~~
47. ~~“Suburban area” means a geographic region within a 10-mile radius of an urban area that has a population density equal to or greater than 1,000 residents per square mile.~~
- ~~48-46.~~ “Third-party payor” means a person, other than a patient, who is financially responsible for the payment, in whole or in part, of a patient’s ~~assessed~~ billed general public rates and charges for EMS ambulance response or transport provided to the patient by a ground ambulance service.
47. “Time-critical condition” means a patient's illness or injury, such as ST Elevated Myocardial Infarction, stroke, trauma that meets the criteria in R9-25-1308(H)(6)(b)(i), or hemodynamic instability, for which research has shown that a transport to a specialized health care institution or a higher level of care improves patient outcomes.
48. “Time-sensitive condition” means a patient's illness or injury for which, in the opinion of one of the following, a delay in the patient receiving appropriate medical services may result in harm to the patient:
- a. For an interfacility transport, a physician, physician assistant, or registered nurse

practitioner providing medical services to the patient; and

b. For a transport that results from a 9-1-1 or similar system dispatch, an EMCT or the physician providing on-line medical direction for the patient.

~~50-49.~~ “Transport” means the conveyance of one or more patients in a ground ambulance vehicle from the point of patient pick-up to ~~the patient’s initial~~ a specified destination.

~~51-50.~~ “Type of ~~ground ambulance~~ service” means an interfacility transport, a convalescent transport, or a transport that ~~requires an immediate response~~ results from a 9-1-1 or similar system dispatch, which is provided by a ground ambulance service.

52: “Urban area” means a geographic region ~~delineated as an urbanized area by the United States Department of Commerce, Bureau of the Census.~~

~~53.~~ “Wilderness area” means a geographic region that has a population density of less than one resident per square mile.

**R9-25-902. Application for an Initial Certificate of Necessity; ~~Provision of ALS Services; Transfer of a Certificate of Necessity~~ (Authorized by A.R.S. §§ ~~36-2201(11)(h), 36-2204, 36-2232, 36-2233(B) 36-2233, 36-2234, 36-2236(A) and (B), 36-2240~~)**

A. An applicant for an initial certificate of necessity shall submit to the Department an application packet, ~~in a Department-provided format,~~ that includes:

1. ~~An application form that contains~~ The following information in a Department-provided format:

a. The legal business or corporate name, mailing address, physical address if different from the mailing address, telephone number, ~~and~~ facsimile number if any, and e-mail address of the ground ambulance service;

b. Any other names by which the applicant is known;

c. If the applicant is a:

i. Governmental entity, the type of governmental entity; or

ii. Business organization:

(1) The type of business organization, and

(2) Whether the business organization is proprietary or non-profit;

d. A list of all business organizations or governmental entities affiliated with the applicant, if applicable, including for each:

i. The legal name;

ii. The type of business organization, if applicable; and

iii. Whether the relationship to the applicant is as a:

(1) Parent organization,

- (2) Subordinate organization.
  - (3) Subsidiary organization.
  - (4) Member organization, or
  - (5) Business organization related to an ambulance service, ambulance response, or transport for which a controlling person of the applicant is also a controlling person of the business organization;
- b-e. The name, title, address, e-mail address, and telephone number of the following:
- i. Each applicant and individual responsible for managing the ground ambulance service;
  - ii. ~~The business representative or designated manager~~ individual acting for the applicant according to R9-25-102;
  - iii. The individual to contact to access the ground ambulance service's records required in ~~R9-25-910~~ R9-25-908(B); and
  - iv. The statutory agent for the ground ambulance service, ~~if applicable~~ or the individual designated by the applicant to accept service of process and subpoenas for the ground ambulance service;
- e. ~~The name, address, and telephone number of the base hospital or centralized medical direction communications center for the ground ambulance service;~~
- d-f. The name, address, email address, and telephone number of the person providing dispatch for the ground ambulance service's dispatch center service;
- e-g. The address, hours of operation, and, if available, telephone number of each suboperation station located within the proposed service area;
- h. Whether the applicant has a proposed deployment plan for the ground ambulance vehicles in subsection (A)(1)(m), including:
- i. Whether the purchase and deployment of additional ground ambulance vehicles are planned for the first 12 months following the applicant receiving a certificate of necessity;
  - ii. Whether additional purchases and further deployment of additional ground ambulance vehicles are planned for the second 12-month-period following the applicant receiving a certificate of necessity; and
  - iii. Whether ground ambulance vehicles will be deployed based on knowledge of the level of service, types of service provided, and locations of calls;
- f. ~~Whether the ground ambulance service is a corporation, partnership, sole proprietorship, limited liability corporation, or other;~~

- ~~g.~~ ~~Whether the business entity is proprietary, non-profit, or governmental;~~
- ~~i.~~ Whether the applicant has a plan for participating in the implementation of a political subdivision's emergency preparedness plan;
- ~~j.~~ A list of EMS providers in surrounding service areas with whom the applicant has a back-up agreement or from whom the applicant has a letter of support;
- ~~h-k.~~ A description of the communication equipment to be used in each ground ambulance vehicle and suboperation station;
- ~~l.~~ If applicable, a description of traffic preemption equipment that the applicant plans to use to facilitate movement of a ground ambulance vehicle through traffic;
- ~~i.m.~~ ~~The make and year of~~ For each ground ambulance vehicle proposed to be used by the ground ambulance service, the manufacturer's name, the year the ground ambulance vehicle was manufactured, and, if available, the current mileage;
- ~~j-n.~~ The number of ambulance attendants and the type of licensure, certification, or registration for each attendant;
- ~~k-o.~~ The proposed hours of operation for the ground ambulance service;
- ~~l-p.~~ The type of ~~ground ambulance~~ service;
- ~~m-q.~~ The level of ~~ground ambulance~~ service;
- ~~r.~~ If the applicant plans to provide ALS services or critical care services, a description of how the applicant plans to provide administrative medical direction according to R9-25-201 and on-line medical direction according to R9-25-202, including, as applicable:
  - ~~i.~~ The name, address, and telephone number of the base hospital or centralized medical direction communications center for the ground ambulance service;
  - ~~ii.~~ The name, address, professional license number, and telephone number of the physician providing administrative medical direction; and
  - ~~iii.~~ The name, address, professional license number, and telephone number of the physician or group of physicians providing on-line medical direction;
- ~~n.~~ ~~Acknowledgment that the applicant:~~
  - ~~i.~~ ~~Is requesting to operate ground ambulance vehicles and a ground ambulance service in this state;~~
  - ~~ii.~~ ~~Has received a copy of 9 A.A.C. 25 and A.R.S. Title 36, Chapter 21.1; and~~
  - ~~iii.~~ ~~Will comply with the Department's statutes and rules in any matter relating to or affecting the ground ambulance service;~~
- ~~s.~~ Whether the applicant agrees to allow the Department to submit supplemental

requests for information under R9-25-1201(C)(3);

t. Attestation that the applicant is familiar with the requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter and will comply with applicable statutes and rules in any matter relating to or affecting the ground ambulance service;

~~o-u.~~ A statement Attestation that any information or documents submitted to the Department are true and correct; and

~~p-v.~~ The signature of the applicant or the applicant's designated representative individual acting for the applicant according to R9-25-102 and the date signed;

2. The following information about the proposed service area:

~~a.~~ Where the ground ambulance vehicles in subsection (A)(1)(i) are located within the applicant's proposed service area;

~~b.~~ A statement of the proposed general public rates;

~~c.~~ A statement of the proposed charges;

~~d.~~ The applicant's proposed response times, response codes, and response-time tolerances for each scene locality in the proposed service area, based on the following:

~~i.~~ The population demographics within the proposed service area;

~~ii.~~ The square miles within the proposed service area;

~~iii.~~ The medical needs of the population within the proposed service area;

~~iv.~~ The number of anticipated requests for each type and level of ground ambulance service in the proposed service area;

~~v.~~ The available routes of travel within the proposed service area;

~~vi.~~ The geographic features and environmental conditions within the proposed service area; and

~~vii.~~ The available medical and emergency medical resources within the proposed service area;

~~a.~~ The square miles within the proposed service area;

~~b.~~ Whether a ground ambulance service currently operates in all or part of the proposed service area and, if so, a list of the ground ambulance services currently operating in the proposed service area;

~~c.~~ The population demographics within the proposed service area;

~~d.~~ Any changes in the population since the last national census;

~~e.~~ Any change in the population demographics since the last national census;

~~f.~~ The medical needs of the population within the proposed service area;

- g. The number of anticipated requests for each type of service and level of service in the proposed service area, including the basis for the estimate;
  - h. The available routes of travel within the proposed service area;
  - i. The anticipated average mileage per transport within the proposed service area, including the basis for the estimate;
  - j. The geographic features and environmental conditions within the proposed service area;
  - k. The available medical and emergency medical resources within the proposed service area;
  - l. The geographic distribution of health care institutions within and surrounding the service area to which and from which the ground ambulance service may be transporting patients;
  - m. A statement of the proposed general public rates for services provided within the proposed service area;
  - n. A statement of the proposed charges; and
  - o. The proposed response times and a compliance percentage, for each scene locality in the proposed service area and priority that will be assigned by the applicant to a response; and
  - p. If planning to provide interfacility transports within the proposed service area:
    - i. The response times and compliance percentages for the interfacility transport of a patient with a time-critical condition for each scene locality; and
    - ii. Either:
      - (1) A plan for complying with the requirements in R9-25-908(E)(3)(c) that demonstrates how quality patient care will be provided, including to patients with a time-sensitive condition; or
      - (2) A plan and justification for a standard different from that in R9-25-908(E)(3)(c);
- e.3. A plan to provide temporary ~~ground~~ ambulance response or transport service to the proposed service area for a limited time when the applicant is unable to provide ~~ground~~ ambulance response or transport service to the proposed service area, including the criteria for the person providing dispatch to implement the plan;
4. Copies of the back-up agreements supporting the plan in subsection (A)(3) or letters of support specified according to subsection (A)(1)(j);

5. A plan for orientation and on-going training of employees;
6. If applicable, a copy of a plan for implementing deployment of ground ambulance vehicles as specified in subsection (A)(1)(h), including the timeframe, if applicable, for the purchase and deployment of additional ground ambulance vehicles during the first 12 months after receiving a certificate of necessity;
  - f. ~~Whether a ground ambulance service currently operates in all or part of the proposed service area and if so, where; and~~
- ~~g-7.~~ Whether an the applicant or a designated manager the individual acting for the applicant according to R9-25-102:
  - i.a. Has ever been convicted of a felony or a misdemeanor involving moral turpitude,
  - ii.b. Has ever had a license or certificate of necessity for a ground ambulance service suspended or revoked by any state or political subdivision, or
  - iii.c. Has ever operated a ground ambulance service without the required certification or licensure in this or any other state;
- ~~3.~~ ~~The following documents:~~
- ~~a-8.~~ A description of the proposed service area by any method specified in A.R.S. § 36-2233(E) and global positioning system data, in a Department-specified format, that would allow a map to be created that illustrates the proposed service area;
9. Documentation for the individual specified according to subsection (A)(1)(e)(ii) that complies with A.R.S. § 41-1080;
10. A copy of the business organization's articles of incorporation, articles of organization, or partnership documents, if applicable;
11. A copy of an organizational chart, illustrating both:
  - a. The relationships in subsection (A)(1)(d) with two levels of supervision; and
  - b. At least three levels of supervision of key individuals operating the ground ambulance service, including the individuals listed in subsection (A)(1)(e)(i) through (iii);
- ~~b-12.~~ A projected Ambulance Revenue and Cost Report covering the first consecutive 12 months of operation, as specified in R9-25-909(A);
13. A written explanation of why the applicant believes there is a public need for the applicant to receive an initial certificate of necessity, including:
  - a. A summary of how the applicant plans to address the factors in subsection (A)(2) to ensure the provision of quality patient care,
  - b. Justification for the proposed level of service,

- c. Justification for proposed response times or compliance percentage, and
  - d. Supporting documentation;
14. If available, any study or statistical analysis that examines the need for ground ambulance service within a service area or proposed service area that:
- a. Considers the current or proposed service area’s medical, fire, and police services; and
  - b. Was created for or adopted by:
    - i. A political subdivision, or
    - ii. A local emergency medical services coordinating system under A.R.S. § 36-2210(1);
15. A summary of the applicant’s financial history, including:
- a. Documentation of capital resources and financial reserves, if applicable, that is available for the establishment and operation of the ground ambulance service; and
  - b. A plan for coverage of expected and unexpected expenses, including the source and amount of funding for cash flow from the date the ground ambulance service commences operation until the date cash flow covers monthly expenses, with supporting documentation;
16. If the applicant is intending to bill for services, the method and plan for the applicant to bill for services;
- e-17. ~~The financing agreement for all capital acquisitions exceeding \$5,000~~ A list of all actual or anticipated purchase agreements or lease agreements to be used in connection with the ground ambulance service, including the monetary amount and duration of each agreement, for:
- a. Real estate,
  - b. Ground ambulance vehicles, or
  - c. Equipment exceeding \$10,000;
  - d. ~~The source and amount of funding for cash flow from the date the ground ambulance service commences operation until the date cash flow covers monthly expenses;~~
- e-18. ~~Any~~ Documentation supporting the estimate of the number of transports to be provided, as shown in the Ambulance Revenue and Cost Report, including any proposed ground ambulance service contract under A.R.S. §§ § 36-2232(A)(1) and 36-2234(K) or 36-2234(M);
- f-19. ~~The information and documents specified in R9-25-1101, if~~ If the applicant is requesting to

- establish general public rates, the information and documents specified in R9-25-1101(A);
20. If the applicant is proposing charges to patients under R9-25-1109, the information required in R9-25-1109(A);
- ~~g-21.~~ Any subscription service contract under A.R.S. §§ § 36-2232(A)(1) and ~~36-2237(B)~~ R9-25-1105;
22. If using a contracted person to provide dispatch, a copy of the contract;
23. If the applicant is planning to provide ALS services or critical care services:
- a. A copy of each current written contract for providing administrative medical direction;
  - b. A copy of each current written contract for providing on-line medical direction, and
  - c. Proof of professional liability insurance for personnel providing ALS services or critical care services required in R9-25-908(A)(1)(a)(iii);
- ~~h-24.~~ A certificate of insurance or documentation of self-insurance required in A.R.S. § 36-2237(A) and ~~R9-25-909~~ R9-25-908(A)(1)(a)(i) and (ii);
- ~~i-25.~~ A surety bond if required under A.R.S. § 36-2237(B); ~~and~~
- ~~j-26.~~ The ~~applicant's and designated manager's~~ resume or other description of experience and qualification to operate a ground ambulance service of the individuals specified according to subsection (A)(11)(b);
27. If applicable, a copy of the applicant's plan for participating in the implementation of a political subdivision's emergency preparedness plan according to subsection (A)(1)(h), including as applicable:
- a. Mass casualty protocols;
  - b. The provision of ambulance response and transport in the event of a local, state-wide, or national emergency;
  - c. Description of the applicant's experience in disaster response command and control structure; and
  - d. Special situations in the proposed service area that need to be taken into consideration; and
- ~~4-28.~~ Any other documents, exhibits, or statements that the applicant believes may assist the Director in evaluating the application or any other information or documents needed by the Director to clarify incomplete or ambiguous information or documents-, such as:
- a. The quality improvement process, as required in R9-25-908(K)(2);
  - b. A plan to collect and submit electronic patient care reports consistent with R9-25-908(K)(2)(a);

- c. A plan to adopt clinical guidelines and operating procedures, consistent with national and state guidelines;
  - d. If applicable, a plan to initiate guideline-based pre-arrival instructions for all callers accessing 9-1-1 or a similar system for assistance;
  - e. Evidence of regular attendance and participation in meetings of the emergency medical services council, established according to A.R.S. § 36-2203, or a regional emergency medical and trauma services system, established according to A.R.S. § 36-2210;
  - f. Evidence of participation in a community-level injury prevention program; or
  - g. Documentation demonstrating that the service model will be cost effective.
- B.** Before an applicant provides ALS, the applicant shall submit to the Department the application packet required in subsection (A) and the following:
- 1. ~~A current written contract for ALS medical direction; and~~
  - 2. ~~Proof of professional liability insurance for ALS personnel required in R9-25-909(A)(1)(b).~~
- C.** ~~When requesting a transfer of a certificate of necessity:~~
- 1. ~~The person wanting to transfer the certificate of necessity shall submit a letter to the Department that contains:~~
    - a. ~~A request that the certificate of necessity be transferred, and~~
    - b. ~~The name of the person to whom the certificate of necessity is to be transferred; and~~
  - 2. ~~The person identified in subsection (C)(1)(b) shall submit:~~
    - a. ~~The application packet in subsection (A); and~~
    - b. ~~The information in subsection (B), if ALS is provided.~~
- D.B.** ~~A~~ In addition to the information and documents specified in subsection (A), applicant for an initial certificate of necessity shall submit the following fees:
- 1. ~~\$100 application filing fee for an initial certificate of necessity, or~~
  - 2. ~~\$50 application filing fee for a transfer of a certificate of necessity.~~
- E.C.** ~~The Department shall approve or deny an application under this Section according to 9 A.A.C. 25; Article 12~~ A.R.S. § 36-2233 and Article 12 of this Chapter.
- D.** The Department may approve an application with special limitations or conditions, based on the best interest of the public.
- E.** If the Department approves an application and sends the applicant the written notice of approval, specified in R9-25-1201(C)(5), the Department shall issue the certificate of necessity to the applicant, consistent with A.R.S. §§ 36-2233(E) and 36-2234(A):
- 1. After the applicant has submitted to the Department for each ground ambulance vehicle to

be operated by the ground ambulance service:

- a. An application for registration of the ground ambulance vehicle that includes all of the information required according to R9-25-1001(B)(1);
- b. A copy of a current and valid motor vehicle registration for the ground ambulance vehicle, issued according to A.R.S. Title 28, Chapter 7, Article 2, or similar statutes in another state; and
- c. Unless the applicant intends to operate the ground ambulance vehicle only as a volunteer not-for-profit service, the following fees for each ground ambulance vehicle to be registered:
  - i. A \$50 registration fee, as required under A.R.S. § 36-2212(D); and
  - ii. A \$200 ambulance operation fee, as required under A.R.S. § 36-2240(3);  
and

2. When the certificate of registration for the first ground ambulance vehicle to be operated by the ground ambulance service is issued.

**F.** The Department may deny an application according to A.R.S. § 36-2233 if an applicant:

1. Fails to comply with any provision in A.R.S. Title 36, Chapter 21.1;
2. Fails to comply with any provision in this Article or Article 2, 10, or 11 of this Chapter;
3. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
4. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

**~~R9-25-904~~R9-25-903. Application for Renewal of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2233, 36-2235, 36-2238, 36-2240, 36-2242)**

**A.** An applicant for a renewal of a certificate of necessity shall submit to the Department, not less than 60 ~~30~~ days before the expiration date of the certificate of necessity, an application packet that includes:

1. ~~An application form that contains the information in R9-25-902(A)(1)(a) through (A)(1)(m) and the signature of the applicant;~~ The following information in a Department-provided format:
  - a. The identifying number on the applicant's current certificate of necessity;
  - b. The legal business or corporate name, address, telephone number, and facsimile number of the ground ambulance service;
  - c. Any other names by which the applicant is known;
  - d. The names of all other business organizations operated by the applicant related to

the ground ambulance service;

- e. The name, title, address, e-mail address, and telephone number of the following:
    - i. Each applicant and individual responsible for managing the ground ambulance service.
    - ii. The individual acting for the applicant according to R9-25-102.
    - iii. The individual to contact to access the ground ambulance service's records required in R9-25-908(B), and
    - iv. The statutory agent for the ground ambulance service or the individual designated by the applicant to accept service of process and subpoenas for the ground ambulance service;
  - f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
  - g. Attestation that the applicant has analyzed response times according to R9-25-908(G)(2) and, if applicable, performance of interfacility transports of patients with no time-critical condition according to R9-25-908(H)(1);
  - h. Attestation that the applicant is familiar with the requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter and will comply with applicable statutes and rules in any matter relating to or affecting the ground ambulance service;
  - i. Attestation that the certificate holder, except as provided in R9-25-908(G)(4), R9-25-908(H)(3), or R9-25-908(K)(1)(c), has and is continuing to meet the conditions of the certificate of necessity;
  - j. Attestation that any information or documents submitted to the Department are true and correct; and
  - k. The signature of the applicant or the applicant's designated representative and the date signed;
2. Proof of continuous insurance coverage or a statement of continuing self-insurance, including a copy of the current certificate of insurance or current statement of self-insurance required in ~~R9-25-909~~ R9-25-908(A);
  3. Proof of continued coverage by a surety bond if required under A.R.S. §§ § 36-2237(B);
  4. A copy of the list of current charges required in R9-25-1109;
  5. ~~An affirmation that the certificate holder has and is continuing to meet the conditions of the certificate of necessity, including assessing only those rates and charges approved and set by the Director; and~~
  5. A list of all certificate holders with which the applicant has back-up agreements;

6. If an instance of noncompliance has been identified, a corrective action plan or documentation specified in R9-25-908(G)(4), R9-25-908(H)(3), or R9-25-908(K)(1)(c), as applicable, if not already submitted to the Department; and
- ~~6.7.~~ \$50 application filing fee.
- B.** A certificate holder who fails to file a timely application for renewal of the certificate of necessity according to A.R.S. § 36-2235 and this Section, shall:
1. ~~cease~~ Cease operations at 12:01 a.m. on the date the certificate of necessity expires;
  - ~~C.2.~~ ~~To commence operations after failing to file a timely renewal application, a person shall~~ If planning to continue operating as a ground ambulance service, file an initial certificate of necessity application according to R9-25-902; and meet all the requirements for an initial certificate of necessity
  3. Not resume operations without receiving a new certificate of necessity from the Department.
- ~~D.C.~~ The Department shall ~~approve or deny~~ review an application packet under this Section according to ~~9 A.A.C. 25, Article 12~~ A.R.S. §§ 36-2233 and 36-2235 and Article 12 of this Chapter, and:
1. Approve the application;
  2. Approve the application with a corrective action plan, as specified in subsection (A)(6);
  3. Approve the application with special limitations or conditions; or
  4. Deny the application.
- D.** The Department may deny an application according to A.R.S. § 36-2235 if an applicant:
1. Fails to comply with any provision in A.R.S. Title 36, Chapter 21.1;
  2. Fails to comply with any provision in this Article or Article 2, 10, or 11 of this Chapter;
  3. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
  4. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).
- E.** If a certificate holder submits an application for renewal according to subsection (A), the current certificate of necessity does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.
- F.** If a certificate holder does not intend to apply for renewal of a certificate of necessity, the certificate holder shall:
1. At least 90 days before the expiration date of the certificate of necessity, send the Department written notice of the certificate holder's intention to cease operating, effective on the expiration date; and
  2. Not discontinue service, except as provided in A.R.S. § 36-2238.

**R9-25-904. Transfer of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2232, 36-2233, 36-2236(A) and (B), 36-2238)**

- A.** A certificate holder shall request that a certificate of necessity be transferred if:
1. There is an anticipated change of ownership, which is considered to occur when:
    - a. In the case of ownership by a sole proprietor, 20% or more interest or a beneficial interest is sold or transferred;
    - b. In the case of ownership by a partnership or a private corporation, 20% or more of the stock, interest, or beneficial interest is sold or transferred; or
    - c. The controlling influence changes to the extent that the management and control of the ground ambulance service is significantly altered, as determined according to subsection (B);
  2. The certificate holder and another certificate holder plan to execute a ground ambulance service contract for the provision of ambulance response or transport by one of the certificate holder's ground ambulance service in a portion of the other certificate holder's service area, except as part of a backup agreement; or
  3. There is a change in the type of business organization.
- B.** The Department shall consider the following when determining whether a controlling influence in the ground ambulance service is changing to the extent that the management and control of the ground ambulance service has altered significantly:
1. Whether there has been or will be a change in who manages or controls the day-to-day operations of one or more ground ambulance vehicles operated by the ground ambulance service, including whether the certificate holder has entered into or intends to enter into a contract or an agreement with another person or entity to supervise or manage all or a part of the ground ambulance service;
  2. Whether there has been or will be a change in who manages or controls staffing and personnel decisions for one or more ground ambulance vehicles operated by the ground ambulance service;
  3. Whether there has been or will be a change in the operating policies and procedures for one or more ground ambulance vehicles operated by the ground ambulance service;
  4. Whether there has been or will be a change in who pays the operating expenses or who receives the operating revenue;
  5. Whether there has been or will be a change in the policy holder on the insurance coverage of one or more ground ambulance vehicles operated by the ground ambulance service;
  6. Whether there has been or will be a change in ownership, management, or control of the

supplies, equipment, and materials for one or more ground ambulance vehicles operated by the ground ambulance service;

7. Whether there has been or will be a change in the risk or liability attendant to the operation of one or more ground ambulance vehicles operated by the ground ambulance service;
8. Whether there has been or will be a change in who manages or controls the strategic or long-term planning of the ground ambulance service;
9. Whether the certificate holder has changed or intends to change affiliations, such as a parent company or a subsidiary owned or operated by the certificate holder, from that specified according to R9-25-902(A)(1)(d); and
10. Other information related to the management and control of the ground ambulance service that the Department deems relevant.

**C.** When requesting a transfer of a certificate of necessity:

1. A certificate holder wanting to transfer the certificate of necessity shall submit the following information to the Department in a written format:
  - a. The name and certificate of necessity number of the certificate holder;
  - b. A request that the certificate of necessity be transferred, including the rationale for the transfer;
  - c. Whether the transfer is due to a change of ownership or to a change in the type of business organization; and
  - d. If the transfer is due to a change of ownership, the name of the person to whom the certificate of necessity is to be transferred; and
2. The person identified in subsection (C)(1)(d) or the individual acting according to R9-25-102 for the new type of business organization shall submit to the Department:
  - a. The information and documents specified in R9-25-902(A)(1), (3) through (7), (9) through (12), (15) through (18), and (22) through (29);
  - b. The \$50 application filing fee for a transfer of a certificate of necessity, as required under A.R.S. § 36-2240(3); and
  - c. A description of any planned amendments to the certificate of necessity during the next 12 months.

**D.** In deciding whether to transfer a certificate of necessity is in the public's best interest, the Director shall consider the following:

1. The information required in subsections (C)(2)(a) and (c);
2. Whether the person specified according to subsection (C)(1)(d) is fit and proper;
3. Whether there is a public need for the transfer to take place;

- a. Based on a possible gap in service or unmet needs in the service area; and
  - b. To ensure consistent service provision, efficiency, cost-effectiveness, and the health and safety of individuals in the service area;
  - 4. Whether the person specified according to subsection (C)(1)(d) demonstrates the ability to provide quality patient care; and
  - 5. Other matters determined by the Director or the applicant to be relevant to the determination of public necessity.
- E.** The Department shall approve or deny an application under this Section according to A.R.S. § 36-2233 and Article 12 of this Chapter.
- F.** If the Department approves an application for a transfer and sends the person in subsection (C)(1)(d) the written notice of approval, specified in R9-25-1201(C)(5), the Department shall issue the certificate of necessity to the person in subsection (C)(1)(d):
- 1. After the person in subsection (C)(1)(d) has submitted to the Department for each ground ambulance vehicle to be operated by the ground ambulance service:
    - a. An application for registration of the ground ambulance vehicle that includes all of the information required according to R9-25-1001(B)(1);
    - b. A copy of a current and valid motor vehicle registration for the ground ambulance vehicle, issued according to A.R.S. Title 28, Chapter 7, Article 2, or similar statutes in another state; and
    - c. Unless the person in subsection (C)(1)(d) intends to operate the ground ambulance vehicle only as a volunteer not-for-profit service, the following fees for each ground ambulance vehicle to be registered:
      - i. A \$50 registration fee, as required under A.R.S. § 36-2212(D); and
      - ii. A \$200 ambulance operation fee, as required under A.R.S. § 36-2240(3);

and
  - 2. When the certificate of registration for the first ground ambulance vehicle to be operated by the ground ambulance service is issued.
- G.** The Department may deny an application under this Section if an applicant:
- 1. Fails to comply with any provision in A.R.S. Title 36, Chapter 21.1;
  - 2. Fails to comply with any provision in this Article or Article 2, 10, or 11 of this Chapter;
  - 3. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
  - 4. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

H. If the Department denies the transfer of a certificate of necessity, the certificate holder shall not discontinue service, except as provided in A.R.S. § 36-2238.

**R9-25-905. Application for Amendment of a Certificate of Necessity (Authorized by A.R.S. §§ 36-2232(A)(4) 36-2232, 36-2240, 36-2247)**

**A.** A certificate holder that wants to amend its certificate of necessity shall submit to the Department the application form in R9-25-902(A)(1) and an application filing fee of \$50 for changes in:

1. The legal name of the ground ambulance service;
2. The legal address of the ground ambulance service;
3. The level of ground ambulance service;
4. The type of ground ambulance service;
5. The service area; or
6. The response times, response codes, or response time tolerances.

**B.** In addition to the application form in subsection (A), an amending certificate holder shall submit:

1. For the addition of ALS ground ambulance service, the information required in R9-25-902(B)(1) and (B)(2);
2. For a change in the service area, the information required in R9-25-902(A)(3)(a);
3. For a change in response times, the information required in subsection R9-25-902(A)(2)(d);
4. A statement explaining the financial impact and impact on patient care anticipated by the proposed amendment;
5. Any other information or documents requested by the Director to clarify incomplete or ambiguous information or documents; and
6. Any documents, exhibits, or statements that the amending certificate holder wishes to submit to assist the Director in evaluating the proposed amendment.

**A.** A certificate holder requesting to amend the certificate of necessity due to a change in the legal name of the ground ambulance service shall submit to the Department:

1. The certificate of necessity number for the ground ambulance service;
2. The name of the ground ambulance services on the certificate of necessity;
3. The new legal name of the ground ambulance service;
4. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the requested amendment;
5. Documentation demonstrating that the change in the name of the ground ambulance service does not constitute a change of ownership; and
6. If applicable, documentation showing the new legal name of the ground ambulance service on:

- a. Documentation of insurance coverage required according to R9-25-908(A), and
  - b. Coverage by a surety bond if required under A.R.S. § 36-2237(B).
- B.** A certificate holder requesting to amend the certificate of necessity for a reason other than a change in subsection (A) shall submit to the Department:
- 1. The following information in a Department-provided format:
    - a. The certificate of necessity number for the ground ambulance service;
    - b. The name and address of the ground ambulance service on the certificate of necessity;
    - c. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the requested amendment;
    - d. A description of the requested change and the rationale for the change;
    - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
    - f. Attestation that the applicant is familiar with the requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter and will comply with applicable statutes and rules in any matter relating to or affecting the ground ambulance service;
    - g. Attestation that the certificate holder will meet the conditions of a modified certificate of necessity, including billing only those rates and charges approved and set by the Director;
    - h. Attestation that any information or documents submitted to the Department are true and correct; and
    - i. The signature of the applicant or the applicant's designated representative and the date signed;
  - 2. For a change in the legal address of the ground ambulance service:
    - a. The new legal address of the ground ambulance service; and
    - b. If applicable, documentation showing the new legal address of the ground ambulance service on documentation of insurance coverage required according to R9-25-908(A);
  - 3. For a change in the hours of service:
    - a. The current and proposed new hours of service.
    - b. The date on which the applicant plans to implement the change.
    - c. Information about the effect the requested change is expected to have on patients.
    - d. Information about the effect the requested change is expected to have on other EMS providers or ground ambulance services in or around the service area, and

- e. Information about the financial effect the requested change is expected to have on the ground ambulance service;
4. For a change in the level of service to be provided:
- a. If planning to begin providing critical care services or ALS services:
    - i. A description of how the certificate holder plans to provide administrative medical direction according to R9-25-201 and on-line medical direction according to R9-25-202.
    - ii. A copy of a current written contract for providing administrative medical direction.
    - iii. A copy of a current written contract for providing on-line medical direction, and
    - iv. Proof of professional liability insurance for personnel providing ALS services or critical care services as required in R9-25-908(A)(1)(a)(iii);
  - b. If planning to begin providing only BLS services:
    - i. A description of the rationale for stopping the provision of ALS services or critical care services.
    - ii. An acknowledgement that another emergency medical services provider may be granted a certificate of necessity to provide ALS services or critical care services in the service area to meet the needs of patients, and
    - iii. A plan for rendezvousing with another ground ambulance service providing ALS services or critical care services, if applicable, for patients requiring more than BLS services, including the identification of the other ground ambulance service;
  - c. Information about the effect the requested change is expected to have on patients, including how the requested change will result in quality patient care;
  - d. Information about the effect the requested change is expected to have on other EMS providers or ground ambulance services in or around the service area; and
  - e. Information about the financial effect the requested change is expected to have on the ground ambulance service;
5. For a change in the type of service to be provided:
- a. If planning to begin providing interfacility transports of patients with a time-critical condition:
    - i. An estimate of the number of transports to be provided;
    - ii. The names of the health care institutions anticipated to be the source or

- destination of the transports:
- iii. The proposed response times and compliance percentages for the interfacility transport of a patient with a time-critical condition;
  - iv. A justification for the response time or compliance percentage that demonstrates how quality patient care will be provided; and
  - v. Whether another ground ambulance service is currently providing interfacility transports of patients with a time-critical condition in the service area and, if so, the name of the other ground ambulance service and the anticipated financial impact on the other ground ambulance service if the change is approved;
- b. If planning to begin providing interfacility transports of patients who do not have a time-critical condition or convalescent transports:
- i. An estimate of the number of transports to be provided;
  - ii. The names of the health care institutions anticipated to be the source or destination of the transports;
  - iii. Either:
    - (1) A plan for complying with the requirements in R9-25-908(E)(3)(c) that demonstrates how quality patient care will be provided, including to patients with a time-sensitive condition; or
    - (2) A plan and justification for a standard different from that in R9-25-908(E)(3)(c);
  - iv. If the certificate holder is requesting to amend the certificate of necessity according to A.R.S. § 36-2234.01, the information required according to A.R.S. § 36-2234.01(B)(1) and (2); and
  - v. Whether another ground ambulance service is currently providing interfacility transports or convalescent transports in the service area and, if so, the name of the other ground ambulance service and the anticipated financial impact on the other ground ambulance service if the change is approved;
- c. If planning to begin providing ambulance response or transport requested through 9-1-1 or a similar system:
- i. An estimate of the number of transports to be provided;
  - ii. The names of the health care institutions anticipated to be the destination of the transports;

- iii. The proposed response times or compliance percentage;
- iv. A justification for the response times or compliance percentage that demonstrates how quality patient care will be provided; and
- v. Whether another ground ambulance service is currently providing ambulance response or transport requested through 9-1-1 or a similar system in the service area and, if so, the name of the other ground ambulance service and the anticipated financial impact on the other ground ambulance service if the change is approved;
- d. Information about the effect the requested change is expected to have on patients, including how the requested change will result in quality patient care;
- e. Information about the effect the requested change is expected to have on health care institutions within and surrounding the service area to which and from which the ground ambulance service would be transporting patients;
- f. Information about the effect the requested change is expected to have on other EMS providers or ground ambulance service in or around the service area;
- g. Information about the financial effect the requested change is expected to have on the ground ambulance service; and
- h. If the planned change will result in new or revised back-up agreements, a copy of the new or revised back-up agreement;
- 6. Except as specified in subsection (D), for a change in the service area:
  - a. A description of the current service area and the proposed service area by any method specified in A.R.S. § 36-2233(E) and global positioning system data that would allow a map to be created that illustrates the current service area and the proposed service area;
  - b. The following information about the proposed service area to be used by the Director in assessing the need for the proposed change:
    - i. The square miles within the proposed service area;
    - ii. The population demographics within the proposed service area;
    - iii. The change in the population demographics since the last national census;
    - iv. The medical needs of the population within the proposed service area;
    - v. The number of anticipated requests for each type of service and level of service in the proposed service area;
    - vi. The available routes of travel within the proposed service area;
    - vii. The geographic features and environmental conditions within the proposed

service area:

- viii. Whether a ground ambulance service currently operates in all or part of the proposed service area and if so, where;
  - ix. The available medical and emergency medical resources within the proposed service area;
  - x. The geographic distribution of health care institutions within and surrounding the proposed service area to which and from which the ground ambulance service would be transporting patients; and
  - xi. The proposed response times and compliance percentage, for each scene locality and priority that will be assigned by the applicant to a response;
  - c. Information about the effect the requested change is expected to have on patients, including how the requested change will result in quality patient care;
  - d. Information about the effect the requested change is expected to have on health care institutions within and surrounding the proposed service area to which and from which the ground ambulance service would be transporting patients;
  - e. Information about the effect the requested change is expected to have on EMS providers in the proposed service area that do not provide transport;
  - f. Information about the financial effect the requested change is expected to have on the ground ambulance service;
  - g. Whether the applicant has a proposed deployment plan for the ground ambulance vehicles registered under Article 10 of this Chapter to the applicant, including:
    - i. Whether suboperation stations will be used or whether ground ambulance vehicles will be deployed based on experience with the level and types of calls; and
    - ii. If suboperation stations will be used, where the applicant plans to locate suboperation stations within the applicant's proposed service area;
  - h. Whether the applicant has a plan for participating in the implementation of a political subdivision's emergency preparedness plan;
  - i. A list of EMS providers in surrounding service areas with whom the applicant has a back-up agreement or from whom the applicant has a letter of support; and
  - j. Any other information specified in R9-25-906 that the applicant believes relevant to a determination of the public necessity for the change in the service area;
7. For a change in the ground ambulance service's response times for ambulance response or transport requested through 9-1-1 or a similar system or for an interfacility transport of a

patient with a time-critical condition:

- a. A description of the ground ambulance service's current response times and compliance percentage;
  - b. The results of the analysis of response time performance required in R9-25-908(G)(2);
  - c. The requested response times or compliance percentage, including a justification for each response time;
  - d. Information about the effect the requested change is expected to have on patients, including applicable information in subsections (B)(6)(b) and (c);
  - e. Information about the effect the requested change is expected to have on health care institutions within and surrounding the service area to which and from which the ground ambulance service would be transporting patients;
  - f. Information about the effect the requested change is expected to have on EMS providers in the service area that do not provide transport; and
  - g. Information about the financial effect the requested change is expected to have on the ground ambulance service;
8. For a change in the plan for complying with the requirements in R9-25-908(E)(3)(c), or with a standard different from that in R9-25-908(E)(3)(c), that demonstrates how quality patient care will be provided, including to patients with a time-sensitive condition:
- a. A description of the ground ambulance service's current plan;
  - b. The results of the analysis of the performance required in R9-25-908(H)(2);
  - c. The requested standard if different from that in R9-25-908(E)(3)(c);
  - d. Information about the effect the requested change is expected to have on patients, including applicable information in subsections (B)(6)(b) and (c);
  - e. Information about the effect the requested change is expected to have on health care institutions within and surrounding the service area to which and from which the ground ambulance service would be transporting patients; and
  - f. Information about the financial effect the requested change is expected to have on the ground ambulance service;
9. For a change in the special limitations or conditions on the ground ambulance service's certificate of necessity:
- a. A description of the special limitations or conditions on the ground ambulance service's certificate of necessity;
  - b. The requested change to the special limitations or conditions on the ground

ambulance service's certificate of necessity, including a justification for each change and how the change is in the best interest of the public;

- c. Information about the effect the requested change is expected to have on patients, including how the requested change will result in quality patient care;
- d. Information about the effect the requested change is expected to have on health care institutions within and surrounding the service area to which and from which the ground ambulance service would be transporting patients;
- e. Information about the effect the requested change is expected to have on EMS providers in the service area that do not provide transport; and
- f. Information about the financial effect the requested change is expected to have on the ground ambulance service;

10. Information required in R9-25-1102 and R9-25-1109(B), as applicable, related to the change, including any change in:

- a. The proposed general public rates for services provided, or
- b. The proposed charges;

11. If applicable, letters of support for the change;

12. Any other information or documentation demonstrating the public necessity for the change or otherwise justifying the change;

13. Any other information or documents requested by the Director to clarify incomplete or ambiguous information or documents;

14. Any documents, exhibits, or statements that the amending certificate holder wishes to submit to assist the Director in evaluating the proposed amendment; and

15. The \$50 application filing fee.

**C.** A certificate holder subject to special limitations or conditions that are not displayed on the certificate holder's certificate of necessity may request, according to subsections (B)(1) and (9), to have the special limitations or conditions modified if the special limitations or conditions were the result of a final decision of the Director, established according to A.R.S. § 41-1092.08(F), issued before January 1, 2024.

**D.** If a certificate of necessity was granted to a certificate holder under A.R.S. § 36-2233(I)(2), the certificate holder shall notify the Department of a change in the service area within 30 calendar days after the change is finalized and include:

1. The following information in a Department-provided format:

- a. The certificate of necessity number for the ground ambulance service,
- b. The name and address of the ground ambulance service on the certificate of

necessity.

- c. A description of the change and the reason for the change.
- d. The effective date of the change.
- e. Attestation that the information or documents submitted to the Department are true and correct, and
- f. The signature of the certificate holder's designated representative and the date signed;

- 2. A description of the current service area and the proposed service area by any method specified in A.R.S. § 36-2233(E) and global positioning system data that would allow a map to be created that illustrates the current service area and the proposed service area; and
- 3. Documentation establishing that the change in service area is under A.R.S. § 36-2233(E)(2).

~~C.E.~~ The Department shall approve or deny an application under ~~this Section~~ subsection (B) or (C) according to ~~9 A.A.C. 25, Article 12~~ A.R.S. § 36-2233, Article 12 of this Chapter, and, if applicable, R9-25-1106 and R9-25-1107.

**~~R9-25-903~~R9-25-906. Determining Public Necessity (Authorized by A.R.S. § 36-2233(B)(2) 36-2233(F))**

A. In determining public necessity for an initial or amended certificate of necessity, the Director shall consider the following to ensure quality patient care:

- 1. The following information, as ~~response times, response codes, and response time tolerances~~ proposed by the applicant for the service area:
  - a. Proposed response times or compliance percentage.
  - b. The priority that may be assigned by an applicant or a certificate holder to a response, and
  - c. The percentage of time the actual response time for a run is or is anticipated to be compliant with the proposed response times during a 12-month period;
- 2. ~~The population demographics within the proposed service area;~~
- 3. ~~The geographic distribution of health care institutions within and surrounding the service area;~~
- 4. ~~Whether issuing a certificate of necessity to more than one ambulance service within the same service area is in the public's best interest, based on:~~
  - a. ~~The existence of ground ambulance service to all or part of the service area;~~
  - b. ~~The response times of and response time tolerances for ground ambulance service to all or part of the service area;~~
  - e. ~~The availability of certificate holders in all or part of the service area; and~~

- ~~d.~~ The availability of emergency medical services in all or part of the service area;
- 2. Whether issuing the certificate of necessity is in the public's best interest:
  - a. Based on a possible gap in service or unmet needs in the service area; and
  - b. To ensure consistent service provision, efficiency, cost-effectiveness, and the health and safety of individuals in the service area;
- ~~5-3.~~ The information in R9-25-902(A)(1) and (A)(2) through (4), (6), (8), (12) through (14), and (19) through (22);
- 4. If applicable, the information in subsection (B); and
- ~~6-5.~~ Other matters determined by the Director or the applicant to be relevant to the determination of public necessity.

**B.** In deciding whether ~~to issue~~ issuing a certificate of necessity to more than one ground ambulance service ~~for convalescent or interfacility transport~~ for the same service area or overlapping service areas is in the public's best interest, the Director shall consider the following in addition to the information in subsections (A)(1) through (3):

- ~~1-~~ The factors in subsections (A)(2), (A)(3), (A)(4)(a), (A)(4)(c), (A)(4)(d), (A)(5), and (A)(6);
- 1. The existence of another ground ambulance service providing ambulance response or transport to all or part of the service area, including the level of service and type of service being provided;
- 2. The current response times and compliance percentages achieved for requests made through 9-1-1 or a similar system in all or part of the service area;
- 3. If applicable, the current response times and compliance percentages achieved for interfacility transports for patients with a time-critical condition in all or part of the service area;
- 4. If applicable, the applicant's plans to provide interfacility transports for patients with no time-critical condition in all or part of the service area in compliance with R9-25-908(E)(3);
- 5. The applicant's plans for implementation, taking into consideration the stability and consistency of service provision;
- 6. If available, information or data that demonstrates the inability of the other certificate holder to provide services in all or part of the service area;
- 7. How the applicant plans to interact with the ground ambulance service currently providing services in all or part of the service area, including the information in R9-25-908(E)(1)(a), (b), and (c);
- 8. The availability of emergency medical services in all or part of the service area;
- ~~2-9.~~ The financial impact on certificate holders whose service area includes all or part of the

service area in the requested certificate of necessity;

3-10. The demonstrated need for additional 9-1-1 or similarly dispatched transport, convalescent transport, or interfacility transport, as applicable, including:

a. Whether a study or statistical analysis demonstrating need has been created for or adopted by the applicant, a political subdivision within the current or proposed service area, or a local emergency medical services coordinating system under A.R.S. § 36-2210 that:

i. Examines whether another ground ambulance service is necessary within the service area or proposed service area to provide ambulance response or transport; and

ii. Takes into account the current or proposed service area's medical, fire, and police services and the other ground ambulance service;

b. If a study or statistical analysis in subsection (B)(11)(a) exists, the content of the study or statistical analysis demonstrating need; and

c. Information received by the Department from a political subdivision, a health care institution, an elected official, or another interested party, as described in A.R.S. § 36-2233(D), indicating a need;

11. For an application for additional 9-1-1 or similarly dispatched transport, the difference between the current response times in the service area for 90% compliance and the response times for 90% compliance proposed by the applicant; and

4-12. Whether a certificate holder for the service area has demonstrated ~~substandard performance~~ noncompliance with requirements in this Article, Articles 2, 10, or 11 of this Chapter, or A.R.S. Title 36, Chapter 21.1.

~~C. In deciding whether to issue a certificate of necessity to more than one ground ambulance service for a 9-1-1 or similarly dispatched transport within the same service area or overlapping service areas, the Director shall consider the following:~~

~~1. The factors in subsections (A), (B)(2), and (B)(4);~~

~~2. The difference between the response times in the service area and proposed response times by the applicant;~~

~~3. A needs assessment adopted by a political subdivision, if any; and~~

~~4. A needs assessment, referenced in A.R.S. § 36-2210, adopted by a local emergency medical services coordinating system, if any.~~

C. The Department may periodically assess whether there have been changes in public necessity associated with a certificate of necessity, to include ensuring quality patient care.

**R9-25-907. Observance of Service Area; Exceptions (A.R.S. § 36-2232)**

A certificate holder shall not provide EMS or transport within an area other than the service area identified in the certificate holder's certificate of necessity except:

1. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene; or
2. According to a back-up agreement.

**R9-25-906.R9-25-907. Determining Response Times, Response Codes Priority for Responses, and Response-Time Tolerances for Certificates of Necessity and Provision of ALS Services Compliance with Specified Times (Authorized by A.R.S. §§ 36-2232, 36-2233, 36-2236)**

**A.** The Department may periodically assess whether the following parameters, as associated with a certificate of necessity, are appropriate to ensure quality patient care:

1. Response times, consistent with A.R.S. §§ 36-2232(A)(4) and 36-2236(E);
2. The priority to be assigned by a certificate holder to a response;
3. The percentage of time that the actual response time for a run is compliant with the response times for the certificate of necessity during a 12-month period;
4. If applicable, the plan for complying with the requirements in R9-25-908(E)(3)(c), or with a standard different from that in R9-25-908(E)(3)(c), that demonstrates how quality patient care will be provided, including to patients with a time-sensitive condition; and
5. If applicable, the percentage of time that the certificate holder is compliant with the standards in the plan in subsection (A)(4) during a 12-month period.

**B.** In determining response times, ~~response codes~~ the priority to be assigned by a certificate holder to a response, and ~~response-time tolerances~~ the percentage of time the actual response time for a run is compliant with the proposed response times during a 12-month period for all or part of a service area or proposed service area, the Director may consider the following:

1. Differences in scene locality, if applicable;
2. The response times and compliance percentages of other ground ambulance services in similar scene localities, as determined by historical response time data;
3. The population density and demographics in the service area or proposed service area;
4. The geographic features and environmental conditions within the service area or proposed service area;
5. The geographic distribution of health care institutions within and surrounding the service area or proposed service area to which and from which the ground ambulance service would be transporting patients;
- 2-6. Requirements of a 9-1-1 or similar dispatch system for all or part of the service area;

- ~~3-7.~~ Requirements in a contract approved by the Department between a ground ambulance service and a political subdivision or health care institution;
- 8. Whether the certificate holder provides interfacility transports of patients with a time-critical condition and, if so:
  - a. The geographic distribution of health care institutions in the service area, and
  - b. The anticipated volumes of 9-1-1 dispatches and of interfacility transports;
- ~~4-9.~~ ~~Medical prioritization~~ The basis for prioritization for the dispatch of a ground ambulance vehicle ~~according to procedures established by the certificate holder's medical direction authority~~ or an emergency medical services provider;
- 10. Information from a political subdivision, a health care institution, an elected official, or another interested party, as described in A.R.S. § 36-2233(D), in the service area that was received by the Department about the request; and
- 11. Other information submitted according to R9-25-902(A)(2) and (14) or R9-25-905(B), as applicable; and
- 5-12. Other matters determined by the Director to be relevant to ~~the measurement~~ a determination of response times, ~~response codes and response-time tolerances~~ compliance percentage, for each scene locality and priority that will be assigned by the applicant to a response.

**C.** The Department may:

- 1. Develop a set of uniform standards for response times based on historical response time data:
  - a. By using the scene locality of a service area or proposed service area, and
  - b. Considering the response time for 90 percent of runs;
- 2. Compare the actual performance of a ground ambulance service to the applicable uniform standard developed according to subsection (C)(1);
- 3. Establish response times based on the applicable uniform standard and the factors specified in subsection (B); and
- 4. Take enforcement action, if appropriate, against a certificate holder based on response-time performance compared with the uniform standard, taking into consideration the factors in subsection (B).

**D.** In determining compliance with the standards in the plan in subsection (A)(4) during a 12-month period, the Director may consider the following:

- 1. The information submitted according to R9-25-902(A)(2) and (14) or R9-25-905(B), as applicable;
- 2. The geographic distribution of health care institutions in the service area and the anticipated

volumes of interfacility transports and 9-1-1 dispatches;

3. Requirements in a contract approved by the Department between a ground ambulance service and health care institution;
4. The basis for prioritization for the dispatch of a ground ambulance vehicle according to procedures established by the certificate holder's medical direction authority;
5. Information from a political subdivision, a health care institution, an elected official, or another interested party, as described in A.R.S. § 36-2233(D), in the service area that was received by the Department about the request; and
6. Other matters determined by the Director to be relevant to a determination of compliance with the standards in the plan in subsection (A)(4).

**R9-25-908. Transport Requirements; Exceptions (A.R.S. §§ 36-2224, 36-2232)**

~~A certificate holder shall transport a patient except:~~

1. ~~As limited by A.R.S. § 36-2224;~~
2. ~~If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;~~
3. ~~If the transport may result in an immediate threat to the ambulance attendant's safety, as determined by the ambulance attendant, certificate holder, or medical direction authority;~~
4. ~~If the patient is more than 17 years old and refuses to be transported; or~~
5. ~~If the patient is in a health care institution and does not meet the federal requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.~~

**R9-25-908. Operations (Authorized by A.R.S. §§ 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)**

**A. Insurance: A certificate holder shall:**

1. Either:
  - a. Maintain with an insurance company authorized to transact business in this state:
    - i. A minimum single occurrence automobile liability insurance coverage of \$1,000,000 for ground ambulance vehicles;
    - ii. A minimum single occurrence professional liability insurance coverage for the ground ambulance service of \$1,000,000; and
    - iii. If the certificate holder provides ALS services or critical care services, a minimum single occurrence professional liability insurance coverage for personnel of the ground ambulance service providing ALS services or critical care services of \$1,000,000; or

- b. Be self-insured for the amounts in subsection (A)(1)(a); and
  - 2. Submit to the Department within seven days after renewal of the insurance coverage in subsection (A)(1)(a) or a change in how the insurance coverage in subsection (A)(1)(a) or (b) is obtained:
    - a. A copy of the certificate of insurance in subsection (A)(1)(a); or
    - b. Documentation of self-insurance according to subsection (A)(1)(b).
- B.** Record Retention: According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:
  - 1. The certificate holder's financial statements;
  - 2. All federal and state income tax records;
  - 3. All employee-related expense reports and payroll records;
  - 4. All bank statements and documents used to reconcile accounts;
  - 5. All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture, and other plant and equipment assets subject to depreciation;
  - 6. All prehospital history incident reports, as specified in subsection (J)(1);
  - 7. All patient billing and reimbursement records;
  - 8. All dispatch records, as specified in subsection (J)(2);
  - 9. All policies and procedures required by this Article or Article 2, 10, or 11 of this Chapter;
  - 10. All plans required by this Article or Article 2, 10, or 11 of this Chapter;
  - 11. Documentation of the analysis of response time performance according to subsection (G)(2);
  - 12. Documentation of the analysis of performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition, according to subsection (H)(1);
  - 13. Documentation of notification to the Department of instances of noncompliance according to subsection (K)(1)(c);
  - 14. All back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, ambulance response, and transport;
  - 15. All written complaints about the ground ambulance service; and
  - 16. Information about destroyed or otherwise irretrievable records in a file including:
    - a. A list of each record destroyed or otherwise irretrievable,
    - b. A description of the circumstances under which each record became destroyed or otherwise irretrievable, and
    - c. The date each record was destroyed or became otherwise irretrievable.

**C. Staffing: A certificate holder shall ensure that:**

1. If a ground ambulance vehicle is marked with a level of service, the ground ambulance vehicle is staffed to provide the level of service identified;
2. An administrative medical director for the ground ambulance service complies with requirements in R9-25-201(F) and R9-25-502(B);
3. Policies and procedures are established, implemented, and maintained that cover:
  - a. Job descriptions, duties, and qualifications, including required skills and knowledge for EMCTs and other employees; and
  - b. Orientation and in-service education for EMCTs and other employees;
4. An EMCT employed by the ground ambulance service:
  - a. Is assigned patient care duties consistent with the EMCT's scope of practice and the administrative medical director's evaluation of the EMCT's skills and capabilities;
  - b. Complies with the protocols required in R9-25-201(E)(2);
  - c. Receives training on the policies and procedures required in R9-25-201(E)(3)(b); and
  - d. Receives ongoing education, training, or remediation consistent with the policies and procedures required in R9-25-201(E)(3)(b)(x); and
5. Staffing of ground ambulance vehicles:
  - a. For the provision of BLS or ALS, is consistent with A.R.S. § 36-2239; and
  - b. Effective January 1, 2025, for critical care services, includes at least one:
    - i. Paramedic with an additional endorsement, indicating additional training and authorization from the Department to provide critical care services; or
    - ii. Registered nurse.

**D. Communications and Advertising: A certificate holder shall ensure that the ground ambulance service:**

1. Makes a good faith effort to communicate information:
  - a. About its hours of operation to the general public through print media, broadcast media, the Internet, or other means; and
  - b. About resource availability and deployment to other EMS providers in overlapping and surrounding service areas;
2. Does not advertise that the ground ambulance service:
  - a. Provides a type of service or level of service other than what is granted in the certificate of necessity,
  - b. Operates in the service area other than what is granted in the certificate of necessity.

or

c. In a manner that circumvents the use of 9-1-1 or another similarly designated emergency telephone number;

3. Establishes, implements, and maintains the protocol for providing information to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), which includes:

a. The date and time the dispatch was received by the ground ambulance service;

b. The unique number used by the ground ambulance service to identify the run;

c. The name of the ground ambulance service;

d. The number or other identifier of the ground ambulance vehicle used for the run;

e. The following information about the patient:

i. The patient's name;

ii. The patient's date of birth or age, as available;

iii. The principal reason for requesting services for the patient;

iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;

v. The patient's level of consciousness at initial contact and when reassessed;

vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;

vii. The results of an electrocardiograph, if available;

viii. The patient's glucose level at initial contact and when reassessed, if applicable;

ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;

x. The results of the patient's neurological assessment, if applicable; and

xi. The patient's pain level at initial contact and when reassessed; and

f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient; and

4. Establishes, implements, and maintains a protocol for providing information to another certificate holder, ambulance service, EMS provider, or health care institution concurrent with the transfer of care, which includes the information in subsections (D)(3)(c), (d), (e), and (f).

E. Dispatch and Scheduling: A certificate holder shall ensure that:

1. A contract or other agreement, including internal policies and procedures, to provide dispatch exists and includes:
  - a. Information about other certificate holders with which the certificate holder has a back-up agreement;
  - b. The process and parameters under which a ground ambulance vehicle of another certificate holder will be dispatched to respond to a call to which a ground ambulance vehicle of the certificate holder cannot respond;
  - c. Except as specified in subsection (E)(2), for an area within the certificate holder's service area that overlaps with another certificate holder's service area, that the nearest ground ambulance vehicle to the patient's location, under either certificate holder that can provide the necessary level of service, will be directed to respond to a call made through 9-1-1 or a similar dispatch system; and
  - d. If the entity providing dispatch is external to the ground ambulance service, a requirement that the certificate holder receive a copy of each dispatch made under the contract or other agreement;
2. If a certificate holder has a ground ambulance service contract under R9-25-1104 with a political subdivision, the ground ambulance service contract contains requirements that specify a method for dispatch, which may differ from requirements in subsection (E)(1)(c); and
3. For an interfacility transport of a patient with no time-critical condition:
  - a. Unless already specified in a written agreement between the certificate holder and the person requesting the interfacility transport, the entity receiving the request for the interfacility transport provides an estimated time of arrival to the person requesting the interfacility transport at the time that the interfacility transport is requested;
  - b. If the estimated time of arrival provided according to subsection (E)(3)(a) changes to a later time, the ground ambulance service, either directly or indirectly, does one of the following:
    - i. Contacts another ground ambulance service to respond to the dispatch, based on the ground ambulance service's back-up plan and back-up agreements;
    - ii. Provides to the contact at the requesting health care institution the name and telephone number of another ground ambulance service with which the ground ambulance service has a back-up agreement; or

iii. Provides an amended estimated time of arrival to the person requesting transport that takes into consideration:

(1) The patient's condition and needs, and

(2) Health and safety;

c. Effective January 1, 2025, unless otherwise specified on the certificate holder's certificate of necessity, the actual time of arrival of a ground ambulance vehicle at a health care institution for an interfacility transport of a patient who does not have a time-critical condition is within 60 minutes of the estimated time of arrival in subsection (E)(3)(a) or amended estimated time of arrival in subsection (E)(3)(b)(iii) for at least 90% of the interfacility transports; and

d. If the interfacility transport does not meet the standards in subsection (E)(3)(c), factors that may have contributed to not meeting the standards are considered through the quality improvement process in subsection (K)(2)(b).

**F. Transport: A certificate holder:**

1. Shall only provide ambulance response or transport within the service area identified in the certificate holder's certificate of necessity except:

a. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene;

b. According to a back-up agreement; or

c. If the area is not included in the service area of another certificate holder;

2. Except as specified in subsection (F)(3), shall transport a patient in the certificate holder's service area who requests transport; and

3. May deny transport to a patient in the certificate holder's service area:

a. As limited by A.R.S. § 36-2224;

b. If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;

c. If the transport may result in an immediate threat to the ambulance attendant's safety, as determined by the ambulance attendant, the certificate holder, the administrative medical director, or a physician providing on-line medical direction and does not affect the ground ambulance service's hours of operation;

d. If the patient is 18 years or age or older, or meets the requirements in A.R.S. § 12-2451, 44-131, or 44-132, and refuses to be transported; or

e. If the patient is in a health care institution and does not meet the federal

requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.

**G.** Response Time Performance: A certificate holder shall ensure that:

1. Response times resulting from a 9-1-1 or similar system dispatch or, if applicable, a request for the interfacility transport of a patient with a time-critical condition comply with requirements of the certificate holder's certificate of necessity;
2. Response time performance, based on the information in subsection (J)(2), is assessed at least every six months for compliance with requirements of the certificate holder's certificate of necessity;
3. The following are reported to the Department annually, in a Department-provided format, concurrent with the submission of the information required in R9-25-909:
  - a. Response time data that complies with requirements in A.R.S. § 36-2232(A)(3), and
  - b. The results of the response time performance assessments in subsection (G)(2); and
4. If response time performance does not comply with requirements of the certificate holder's certificate of necessity, either:
  - a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (G)(3); or
  - b. The certificate holder submits to the Department with the information required in subsection (G)(3) documentation demonstrating that noncompliance was due to:
    - i. A situation specified in A.R.S. § 36-2232(G), or
    - ii. An external factor beyond the control of the certificate holder.

**H.** Performance of Interfacility Transports of Patients with No Time-Critical Condition: Effective January 1, 2025, a certificate holder shall ensure that:

1. The performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition:
  - a. Is based on the information in subsection (J)(2);
  - b. Is assessed at least every six months;
  - c. Includes the analysis of:
    - i. The number of calls received;
    - ii. The time a call was received;
    - iii. The estimated time of arrival;
    - iv. The time of arrival at the patient's location; and
    - v. Any other information about cancelled calls, amended estimated times of arrival, or delays that may have factored into performance; and

- d. Includes a description of any actions taken by the certificate holder to improve performance;
  - 2. The results of the performance assessments in subsection (H)(1) are reported to the Department annually in a Department-provided format, concurrent with the submission of the information required in R9-25-909; and
  - 3. If the performance of interfacility transports of patients with no time-critical condition does not comply with subsection (E)(3)(c) or requirements of the certificate holder's certificate of necessity, as applicable, either:
    - a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (H)(2); or
    - b. The certificate holder submits to the Department with the information required in subsection (H)(2) documentation demonstrating that noncompliance was due to an external factor beyond the control of the certificate holder.
- I. The Department may require that a certificate holder contract for third-party monitoring of response time performance as part of a:
  - 1. Political subdivision contract, unless both parties to the contract waive the requirement; or
  - 2. Corrective action plan.
- J. Records: A certificate holder shall ensure that:
  - 1. A prehospital incident history report, in a Department-provided format, is created for each patient that includes the following information, as available:
    - a. The name and identification number of the ground ambulance service;
    - b. Information about the software for the storage and submission of the prehospital incident history report;
    - c. The unique number assigned to the run;
    - d. The unique number assigned to the patient;
    - e. Information about the response to the dispatch, including:
      - i. The level of service requested;
      - ii. Information obtained by the person providing dispatch about the request;
      - iii. Information about the ground ambulance vehicle assigned to the dispatch;
      - iv. Information about the EMCTs responding to the dispatch;
      - v. The priority assigned to the dispatch; and
      - vi. Response delays, as applicable;
    - f. The date and time that:
      - i. The call requesting service was received through the 9-1-1 or similar

- dispatch system.
- ii. The request was received by the person providing dispatch.
- iii. The ground ambulance service received the dispatch.
- iv. The ground ambulance vehicle left for the patient's location.
- v. The ground ambulance vehicle arrived at the patient's location.
- vi. The EMCTs in the ground ambulance vehicle arrived at the patient's side.
- vii. Transfer of care for the patient occurred at a location other than the destination.
- viii. The ground ambulance vehicle departed the patient's location.
- ix. The ground ambulance vehicle arrived at the destination.
- x. Transfer of care for the patient occurred at the destination, and
- xi. The ground ambulance vehicle was available to take another call;
- g. Information about the patient, including:
  - i. The patient's first and last name;
  - ii. The address of the patient's residence;
  - iii. The county of the patient's residence;
  - iv. The country of the patient's residence;
  - v. The patient's gender, race, ethnicity, and age;
  - vi. The patient's estimated weight;
  - vii. The patient's date of birth; and
  - viii. If the patient has an alternate residence, the address of the alternate residence;
- h. The primary method of payment for services and anticipated level of payment;
- i. Information about the scene, including:
  - i. Specific information about the location of the scene;
  - ii. Whether the ground ambulance vehicle was first on the scene;
  - iii. The number of patients at the scene;
  - iv. Whether the scene was the location of a mass casualty incident; and
  - v. If the scene was the location of a mass casualty incident, triage information;
- j. Information about the reason for requesting service for the patient, including:
  - i. The date and time of onset of symptoms and when the patient was last well;
  - ii. Information about the principal reason the patient needs services;
  - iii. The patient's symptoms;
  - iv. The results of the EMCT's initial assessment of the patient;

- v. If the patient was injured, information about the injury and the cause of the injury;
  - vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and
  - vii. For an interfacility transport, the reason for the transport;
  - k. Information about any specific barriers to providing care to the patient;
  - l. Information about the patient's medical history, including:
    - i. Known allergies to medications,
    - ii. Surgical history,
    - iii. Current medications, and
    - iv. Alcohol or drug use;
  - m. Information about the patient's current medical condition, including the information in subsections (D)(2)(e)(v) through (xi) and the time and method of assessment;
  - n. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;
  - o. If not specifically included under subsection (J)(1)(l), (l)(iv), (m), or (n), the information required in A.A.C. R9-4-602(A);
  - p. Information about any procedures performed on the patient and the patient's response to the procedure;
  - q. Whether the patient was transported and, if so, information about the transport;
  - r. Information about the destination of the transport, including the reason for choosing the destination;
  - s. Whether transfer of care for the patient to another EMS provider or ambulance service occurred and, if so, identification of the EMS provider or ambulance service;
  - t. Unless transfer of care for the patient to another EMS provider or ambulance service occurred, information about:
    - i. Whether the destination facility was notified that the patient being transported has a time-critical condition and the time of notification,
    - ii. The disposition of the patient at the destination, and
    - iii. The disposition of the run;
  - u. Any other narrative information about the patient, care receive by the patient, or transport; and
  - v. The name and certification level of the EMCT providing the information; and
2. Dispatch records for each call or request for service, including all cancelled runs, contain the

following information, in a Department-provided format:

- a. The name of the ground ambulance service;
- b. The date;
- c. Level of service;
- d. Type of service;
- e. Staffing of the run;
- f. Time of receipt of the call;
- g. Time of the dispatch;
- h. The estimated time of arrival, as provided according to subsection (E)(3)(a) if applicable;
- i. Departure time to the patient's location;
- j. Address of the patient's location;
- k. Time of arrival at the patient's location;
- l. Departure time to the destination health care institution;
- m. Name and address of the destination health care institution;
- n. Time of arrival at the destination health care institution;
- o. Any type of delay, if applicable;
- p. The unique reference number used by the ground ambulance service to identify the patient, dispatch, or run;
- q. The number assigned to the ground ambulance vehicle by the certificate holder;
- r. The priority assigned by a certificate holder to the response;
- s. The scene locality; and
- t. Whether the dispatch is a scheduled transport.

**K. Assuring Consistent, Compliant Performance: A certificate holder shall:**

- 1. Adopt, implement, and maintain policies and procedures for:
  - a. Complaint resolution;
  - b. Assessing the ground ambulance service's compliance with requirements in this Article, Articles 2, 10, or 11 of this Chapter, or A.R.S. Title 36, Chapter 21.1, including the review of:
    - i. The information provided to an emergency receiving facility for compliance with the protocol required in R9-25-201(E)(2)(d),
    - ii. Chain of custody for drugs,
    - iii. Compliance with minimum equipment requirements for a ground ambulance vehicle,

- iv. Compliance with requirements in R9-25-201(E)(3), and
    - v. The quality improvement parameters in subsection (K)(2)(b) related to the provision of services;
  - c. Notifying the Department within 30 calendar days after completing an assessment in subsection (K)(1)(b), during which an instance of noncompliance was identified, and submitting a corrective action plan that complies with requirements in R9-25-910(E)(2)(a) through (d); and
  - d. A quality improvement process according to subsection (K)(2);
- 2. Establish, document, and implement a quality improvement process, as specified in policies and procedures, through which:
  - a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:
    - i. Collected continuously;
    - ii. For the information required in subsection (J)(1), submitted to the Department, in a format specified by the Department and within 48 hours after the beginning of a run, for quality improvement purposes; and
    - iii. If notified that the submission of information to the Department according to subsection (K)(2)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;
  - b. Continuous quality improvement processes are developed and implemented to identify, document, and evaluate issues related to the provision of services to ensure quality patient care, including:
    - i. Care provided to patients with time-critical conditions, including deviations from national treatment standards for a patient with a time-critical condition;
    - ii. Transport, including an interfacility transport of a patient that does not have a time-critical condition;
    - iii. Documentation; and
    - iv. Patient status upon arrival at the destination;
  - c. A committee consisting of the administrative medical director, the individual managing the ground ambulance service or designee, and other employees as appropriate:
    - i. Review the data in subsection (K)(2)(a) and any issues identified in subsection (K)(2)(b) on at least a quarterly basis; and



1. The certificate of necessity number for the ground ambulance service;
2. The name of the ground ambulance services on the certificate of necessity;
3. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the notification; and
4. Information about the change, including, as applicable:
  - a. How the number of suboperation stations is changed from the information on the certificate holder's certificate of necessity;
  - b. The address of each suboperation station that is being removed from service; and
  - c. The address, hours of operation, and telephone number of each new suboperation station located within the service area.

N. A certificate holder shall submit to the Department, no later than 180 days after the certificate holder's fiscal year end, the information in the Ambulance Revenue and Cost Report specified in R9-25-909(A) or (C), as appropriate to the certificate holder's business organization.

**R9-25-909. Certificate of Insurance or Self-Insurance (A.R.S. §§ 36-2232, 36-2233, 36-2237)**

**A.** A certificate holder shall:

1. ~~Maintain with an insurance company authorized to transact business in this state:~~
  - a. ~~A minimum single occurrence automobile liability insurance coverage of \$500,000 for ground ambulance vehicles; and~~
  - b. ~~A minimum single occurrence malpractice or professional liability insurance coverage of \$500,000; or~~
2. ~~Be self-insured for the amounts in subsection (A)(1).~~

**B.** A certificate holder shall submit to the Department:

1. ~~A copy of the certificate of insurance; or~~
2. ~~Documentation of self-insurance.~~

**C.** A certificate holder shall submit a copy of the certificate of insurance to the Department no later than five days after the date of issuance of:

1. ~~A renewal of the insurance policy; or~~
2. ~~A change in insurance coverage or insurance company.~~

**R9-25-910.R9-25-909. Record and Ambulance Revenue and Cost Reporting Requirements (Authorized by A.R.S. §§ 36-2232, 36-2241, 36-2246)**

**A.** A certificate holder shall submit to the Department, no later than 180 days after the certificate holder's fiscal year end, the appropriate Ambulance Revenue and Cost Report.

**B.** According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:

1. ~~The certificate holder's financial statements;~~
2. ~~All federal and state income tax records;~~
3. ~~All employee-related expense reports and payroll records;~~
4. ~~All bank statements and documents verifying reconciliation;~~
5. ~~All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture, and other plant and equipment assets subject to depreciation;~~
6. ~~All first care forms required in R9-25-514 and R9-25-615;~~
7. ~~All patient billing and reimbursement records;~~
8. ~~All dispatch records, including the following:~~
  - a. ~~The name of the ground ambulance service;~~
  - b. ~~The month of the record;~~
  - c. ~~The date of each transport;~~
  - d. ~~The number assigned to the ground ambulance vehicle by the certificate holder;~~
  - e. ~~Names of the ambulance attendants;~~
  - f. ~~The scene;~~
  - g. ~~The actual response time;~~
  - h. ~~The response code;~~
  - i. ~~The scene locality;~~
  - j. ~~Whether the scene to which the ground ambulance vehicle is dispatched is outside of the certificate holder's service area; and~~
  - k. ~~Whether the dispatch is a scheduled transport;~~
9. ~~All ground ambulance service back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, EMS, and transport;~~
10. ~~All written ground ambulance service complaints; and~~
11. ~~Information about destroyed or otherwise irretrievable records in a file including:~~
  - a. ~~A list of each record destroyed or otherwise irretrievable;~~
  - b. ~~A description of the circumstances under which each record became destroyed or otherwise irretrievable; and~~
  - e. ~~The date each record was destroyed or became otherwise irretrievable.~~

A. Except as provided in subsection (C), a certificate holder shall ensure that an Ambulance Revenue and Cost Report for a ground ambulance service includes, in a Department-provided format:

1. The following information to identify the source and time period for the Ambulance Revenue and Cost Report:

- a. The legal name of the ground ambulance service and any other names by which the ground ambulance service is known;
  - b. The identifying number on the certificate holder's current certificate of necessity, if applicable;
  - c. The physical address at which financial records on which the information in the Ambulance Service and Cost Report is based are maintained;
  - d. The mailing address for the ground ambulance service, if different from the address in subsection (A)(1)(c);
  - e. The name, title, e-mail address, and telephone number of the following:
    - i. The individual responsible for managing the ground ambulance service; and
    - ii. The individual to contact regarding the information in the Ambulance Service and Cost Report;
  - f. The beginning date and ending date of the reporting period; and
  - g. Whether the method of valuing inventory is:
    - i. First-in-first-out;
    - ii. Last-in-first-out; or
    - iii. Another method, including a description of the method;
2. The following information to provide data in support of information in other portions of the Ambulance Revenue and Cost Report:
- a. Except as provided in subsection (B), for each of the following, for the reporting period, under the ground ambulance service's subscription service rate, contract rate, or general public rate, the number of:
    - i. Transports billed at the critical care rate,
    - ii. Transports billed at the ALS base rate,
    - iii. Transports billed at the BLS base rate,
    - iv. Miles billed at the mileage rate while a patient is being transported,
    - v. Hours and minutes billed according to R9-25-1108(E), and
    - vi. Canceled and non-billable runs;
  - b. For each of subsections (A)(2)(a)(i) through (vi), the total number for all three rates for the reporting period; and
  - c. If applicable, the number of hours different classifications of EMCT and other ambulance attendants volunteered for the ground ambulance service and the total number of volunteer hours for the reporting period;

3. The following information about revenue generated for the reporting period from routine operations of the ground ambulance service:
  - a. Except as provided in subsection (B), the amount of revenue generated from the following sources of revenue:
    - i. Transports billed at the critical care rate;
    - ii. Transports billed at the ALS base rate;
    - iii. Transports billed at the BLS base rate;
    - iv. Miles billed at the mileage rate while a patient is being transported;
    - v. Hours and minutes billed according to R9-25-1108(E),
    - vi. Charges for disposable supplies, medical supplies, medications, and oxygen-related items;
    - vii. Charges for nursing services;
    - viii. Charges for positioning a staffed ground ambulance vehicle at a public or private event, such as a sporting event or car race; and
    - ix. Other sources of routine operating revenue; and
  - b. The total amount of revenue generated for the reporting period from routine operations of the ground ambulance service;
4. The costs of goods, such as disposable supplies, medical supplies, medications, and oxygen-related items, charged to patients for the reporting period, calculated as:
  - a. The cost of the beginning inventory of all such goods,
  - b. Plus the costs of purchased items,
  - c. Plus any other costs, and
  - d. Minus the cost of the ending inventory of all such goods;
5. The following information about revenue generated for the reporting period from sources other than routine operations of the ground ambulance service:
  - a. For each entity with which the ground ambulance service has a ground ambulance service contract:
    - i. The name of the entity with which the ground ambulance service has the contract,
    - ii. The total number of billable runs for the reporting period,
    - iii. The amount billed for the reporting period based on the general public rate,
    - iv. The percent discount under the contract, and
    - v. The resulting discount amount;
  - b. The total amount of the discount amount from all the entities listed according to

- subsection (A)(5)(a); and
- c. For a ground ambulance service providing subscription service, subscription service revenue and direct expenses, including:
- i. The amount billed for the reporting period at the general public rate established according to R9-25-1101 or R9-25-1102;
  - ii. Any reductions to the amount in subsection (A)(5)(c)(i) due to:
    - (1) The discount amount the ground ambulance service receives from AHCCCS as an allowable rate,
    - (2) The discount amount the ground ambulance service receives from Medicare as an allowable rate,
    - (3) The subscription service rate established according to R9-25-1105, and
    - (4) Uncollectable revenue associated with subscription service;
  - iii. The total of the amounts in subsections (A)(5)(c)(ii)(1) through (4);
  - iv. The difference between the amount in subsection (A)(5)(c)(i) and the amount in subsection (A)(5)(c)(iii);
  - v. The amount of revenue from the sales of subscription service contracts;
  - vi. A description of other revenue associated with subscription service and the amount of revenue;
  - vii. The total subscription service revenue, calculated as the sum of the amounts in subsections (A)(5)(c)(iv) through (vi); and
  - viii. Direct expenses incurred selling subscription service contracts, by type of expense and in total;
- d. The amount of revenue generated for the reporting period, by type of source of revenue, including from any other sources of revenue besides routine operations of the ground ambulance service;
- e. The total amount of revenue generated for the reporting period from sources other than routine operations of the ground ambulance service;
6. Except as provided in subsection (B), the following information about discounts for all applicable patients for the reporting period, based on the difference between the general public rate a ground ambulance service assesses a patient and the discount amount the ground ambulance service receives for each of the following:
- a. From AHCCCS reimbursement;
  - b. From Medicare reimbursement;

- c. From a contact rate or range of rates established according to R9-25-1103; and
  - d. From the provision of subscription service established according to R9-25-1105;
  - e. From any other discount amount, including a description of the source and the amount; and
  - f. The totals of subsections (A)(6)(a) through (e):
7. The total amount of revenue generated and allowances given by the ground ambulance service for the reporting period;
8. The following information about personnel of the ground ambulance service:
- a. Except as provided in subsection (B), the number of FTEs, calculated as the sum of all hours for which employee wages were paid for the reporting period divided by 2,080, for each of the following categories of personnel, for the reporting period:
    - i. Owners or officers of the ground ambulance service;
    - ii. Managers of the ground ambulance service;
    - iii. Each classification of ambulance attendants who provide services on a ground ambulance vehicle, not including personnel who were paid wages on a per run basis; and
    - iv. Other types of employees;
  - b. The total number of FTEs for the reporting period;
  - c. Except as provided in subsection (B), the following for each category of personnel in subsections (A)(8)(a)(i) through (iv), including personnel who were paid wages on a per run basis:
    - i. Gross wages,
    - ii. Payroll taxes,
    - iii. Employee fringe benefits, and
    - iv. The totals of subsections (A)(8)(c)(i) through (iii);
  - d. The total amount of personnel expenses in subsection (A)(8)(c) for all personnel;
  - e. Details of salaries and wages paid to officers or owners of the ground ambulance service, including:
    - i. The name, title, and percentage ownership of each officer or owner;
    - ii. The salary or wages paid and FTE equivalent for the time the officer or owner spent performing management duties, for each officer or owner;
    - iii. The salary or wages paid and FTE equivalent for the time the officer or owner spent performing duties as an EMCT, for each officer or owner;
    - iv. The salary or wages paid and FTE equivalent for the time the officer or

- owner spent performing office or administrative duties, for each officer or owner;
- v. The salary or wages paid and FTE equivalent for the time the officer or owner spent performing other types of duties, for each officer or owner; and
  - vi. The total salary or wages paid and FTE equivalent for the time all officers or owners spent performing the types of duties in subsections (A)(8)(e)(ii) through (v); and
- f. Details on scheduled shifts, hourly wages, annual salary, and amount per run or shift for each category of personnel in subsection (A)(8)(b)(ii) through (iv);
9. Except as provided in subsection (B), the operating expenses incurred by the ground ambulance service for the reporting period, for each type of operating expense;
10. The total operating expenses incurred by the ground ambulance service for the reporting period;
11. Ambulance service income, calculated as the difference between the amount identified in subsection (A)(7) and the amount identified in subsection (A)(10);
12. The income and expenses, other than revenue and operating expenses, for each type of income received and expense incurred by the ground ambulance service for the reporting period;
13. The total income and expenses, other than revenue and operating expenses, for the reporting period;
14. The net income or loss for the reporting period, before taxes, calculated as the sum of the amounts identified in subsections (A)(11) and (A)(13);
15. The amounts of:
- a. State income taxes,
  - b. Federal income taxes, and
  - c. The total of subsections (A)(15)(a) and (b);
16. The net income or loss for the reporting period, after taxes, calculated as the difference between the amounts in subsections (A)(14) and (A)(15)(c);
17. Information pertaining to depreciation of property or equipment;
18. The amount of assets, for each type of asset, of the ground ambulance service for the reporting period;
19. The total amount of assets of the ground ambulance service for the reporting period;
20. The amount of liabilities, for each type of liability, of the ground ambulance service for the reporting period;

- 21. The total amount of liabilities of the ground ambulance service for the reporting period;
- 22. The amount of long-term debt, for each type of long-term debt, of the ground ambulance service for the reporting period;
- 23. The total amount of long-term debt of the ground ambulance service for the reporting period;
- 24. The amount of equity, for each type of equity, of the ground ambulance service for the reporting period;
- 25. The total amount of equity of the ground ambulance service for the reporting period;
- 26. The total amount of liabilities and equity of the ground ambulance service for the reporting period;
- 27. The statement of cash flows for the reporting period;
- 28. A list of all business organizations or governmental entities affiliated with the certificate holder, if applicable, including for each:
  - a. The legal name;
  - b. The type of business organization, if applicable; and
  - c. Whether the relationship to the applicant is as a:
    - i. Parent organization,
    - ii. Subordinate organization,
    - iii. Subsidiary organization,
    - iv. Member organization, or
    - v. Business organization related to an ambulance service, EMS, or transport for which a controlling person of the applicant is also a controlling person of the business organization; and
- 29. An attestation including:
  - a. The signature of the individual specified in subsection (A)(1)(e)(i), including the individual's title and date of signature;
  - b. A statement that the individual in subsection (A)(29)(a) directed the preparation of the Ambulance Revenue and Cost Report in accordance with requirements in this Article and using an accrual basis of accounting; and
  - c. A statement that the information provided in the Ambulance Revenue and Cost Report is true and correct.

**B.** If a ground ambulance service applies local resident subsidization to reimbursement under the general public rate, a certificate holder shall ensure that the Ambulance Revenue and Cost Report for a ground ambulance service includes, in a Department-provided format:

1. The following, in total and broken out for both subsidized patients and non-subsidized patients:
  - a. The information for subsections (A)(2)(a)(i) through (vi) under the ground ambulance service's general public rate;
  - b. The amount of revenue generated from the sources of revenue specified in subsections (A)(3)(a)(i) through (ix) from routine operations of the ground ambulance service; and
  - c. The amount of discount for all applicable patients for the reporting period, based on the difference between the general public rate a ground ambulance service assesses a patient and the discount amount the ground ambulance service receives:
    - i. From AHCCCS reimbursement,
    - ii. From Medicare reimbursement, and
    - iii. Due to the local resident subsidization;
2. The number of FTEs, calculated as the sum of all hours for which employee wages were paid for the reporting period divided by 2,080, for each of the following categories of personnel, for the reporting period:
  - a. Managers of the ground ambulance service;
  - b. Ambulance attendants who provide services on a ground ambulance vehicle, not including personnel who were paid wages on a per run basis; and
  - c. Other types of employees;
3. The following for each category of personnel in subsection (B)(2)(a) through (c):
  - a. Gross wages,
  - b. Payroll taxes,
  - c. Employee fringe benefits, and
  - d. The totals of subsections (B)(3)(a) through (c);
4. If applicable, for each category of employee in subsection (B)(2)(a) through (c), the basis of allocation of gross wages, payroll taxes, employee fringe benefits, and the totals of the allocations; and
5. If applicable, for each category of employee in subsection (B)(2)(a) through (c), the allocation percentage for gross wages, payroll taxes, and employee fringe benefits;
6. The operating expenses incurred, for each type of operating expense, by the ground ambulance service for the reporting period in total and with the allocation percentage for each category of operating expense, including the basis of allocation.

- C. A certificate holder shall ensure that an Ambulance Revenue and Cost Report for a ground ambulance service under A.R.S. § 36-2246(C) includes, in a Department-provided format:
1. The following information to identify the source and time period for the Ambulance Revenue and Cost Report:
    - a. The legal name of the ground ambulance service and any other names by which the ground ambulance service is known; and
    - b. The beginning date and ending date of the reporting period; and
  2. The following information to provide data in support of information in other portions of the Ambulance Revenue and Cost Report:
    - a. For each of the following, for the reporting period, under the ground ambulance service's subscription service rate, contract rate, or general public rate, the number of:
      - i. Transports billed at the critical care rate,
      - ii. Transports billed at the ALS base rate,
      - iii. Transports billed at the BLS base rate,
      - iv. Miles billed at the mileage rate while a patient is being transported,
      - v. Hours and minutes billed according to R9-25-1108(E), and
      - vi. Canceled and non-billable runs;
    - b. For each of subsections (C)(2)(a)(i) through (vi), the total number for all three rates for the reporting period; and
    - c. If applicable, the number of hours different classifications of EMCT and other ambulance attendants volunteered for the ground ambulance service and the total number of volunteer hours for the reporting period;
  3. The following information about revenue generated for the reporting period from routine operations of the ground ambulance service:
    - a. The amount of revenue generated from the following sources of revenue:
      - i. Transports billed at the critical care rate;
      - ii. Transports billed at the ALS base rate;
      - iii. Transports billed at the BLS base rate;
      - iv. Miles billed at the mileage rate while a patient is being transported;
      - v. Hours and minutes billed according to R9-25-1108(E),
      - vi. Charges for disposable supplies, medical supplies, medications, and oxygen-related items;
      - vii. Charges for nursing services; and

- viii. Charges for positioning a staffed ground ambulance vehicle at a public or private event, such as a sporting event or car race; and
  - b. The total amount of revenue generated for the reporting period from routine operations of the ground ambulance service;
- 4. The following information about discounts for all applicable patients for the reporting period, based on the difference between the general public rate a ground ambulance service assesses a patient and the discount amount the ground ambulance service receives:
  - a. From AHCCCS reimbursement,
  - b. From Medicare reimbursement,
  - c. Due to a contact rate or range of rates established according to R9-25-1103,
  - d. Due to a subscription service rate established according to R9-25-1105,
  - e. Due to any other revenue reduction, and
  - f. From the totals of subsections (C)(4)(a) through (e);
- 5. The total amount of revenue generated, less allowances given, by the ground ambulance service from routine operations for the reporting period;
- 6. The following information about personnel of the ground ambulance service:
  - a. The total number of FTEs, calculated as the sum of all hours for which employee wages were paid for the reporting period divided by 2,080, for the reporting period;
  - b. The number of FTEs, for each of the following categories of personnel, for the reporting period, not including personnel who were paid wages on a per run basis:
    - i. Managers of the ground ambulance service,
    - ii. Ambulance attendants who provide services on a ground ambulance vehicle, and
    - iii. Other types of employees;
  - c. The gross wages for each category of personnel in subsection (C)(6)(b)(i) through (iii);
  - d. Payroll taxes and employee fringe benefits for each category of personnel; and
  - e. The total gross wages taxes and fringe benefits for all category of personnel in subsections (C)(6)(b)(i) through (iii);
- 7. The operating expenses incurred by the ground ambulance service for the reporting period for each type of operating expense;
- 8. The total operating expenses incurred by the ground ambulance service for the reporting period;
- 9. The total operating income or loss, calculated as the difference between the amount

identified in subsection (C)(5) and the amount identified in subsection (C)(8):

10. The amount of revenue generated or income derived for the reporting period by type of source of revenue or income, from sources other than routine operations of the ground ambulance service, including from:
  - a. The sale of subscription service contracts under R9-25-1105;
  - b. Any other sources of operating revenue besides routine operations of the ground ambulance service, including a description of the sources and amount of revenue;
  - c. Local supportive funding; and
  - d. Any other sources of income besides routine operations of the ground ambulance service, including a description of the sources and amount of income;
11. Any other expenses incurred by the ground ambulance service for the reporting period, including a description of the sources and amount of expenses;
12. The net income or loss for the reporting period, before taxes, from sources other than routine operations of the ground ambulance service, calculated as the sum of the amounts identified in subsections (C)(9) and (C)(10), minus the amount in subsection (C)(11);
13. The amounts of:
  - a. State income taxes,
  - b. Federal income taxes, and
  - c. The total of subsections (C)(13)(a) and (b);
14. The net income or loss for the reporting period, after taxes, calculated as the difference between the amounts in subsections (C)(12) and (C)(13)(c);
15. The amount of assets, for each type of asset, of the ground ambulance service for the reporting period;
16. The total amount of current assets of the ground ambulance service for the reporting period;
17. Information pertaining to depreciation of property or equipment;
18. The amount of liabilities, for each type of liability, of the ground ambulance service for the reporting period;
19. The total amount of liabilities of the ground ambulance service for the reporting period;
20. The amount of long-term debt, for each type of long-term debt, of the ground ambulance service for the reporting period;
21. The total amount of long-term debt of the ground ambulance service for the reporting period;
22. The amount of equity, for each type of equity, of the ground ambulance service for the reporting period;

- 23. The total amount of equity of the ground ambulance service for the reporting period;
- 24. The total amount of liabilities and equity of the ground ambulance service for the reporting period;
- 25. The statement of cash flows for the reporting period.

**R9-25-910. Inspections and Investigations (Authorized by A.R.S. §§ 36-2204, 36-2212, 36-2232, 36-2241, 36-2245)**

- A. The Department may conduct an inspection of a ground ambulance service, which may include the ground ambulance service’s premises, records, and equipment, and each ground ambulance vehicle operated or to be operated by the ground ambulance service.**
- B. If the Department receives written or verbal information alleging a violation of this Article; Article 2, 10, or 11 of this Chapter; or A.R.S. Title 36, Chapter 21.1, the Department may conduct an investigation.**
  - 1. The Department may conduct an inspection as part of an investigation.
  - 2. A certificate holder shall allow the Department to inspect the ground ambulance service’s premises, records, and equipment, and each ground ambulance vehicle and to interview personnel as part of an investigation.
- C. When an application for a certificate of necessity for a ground ambulance service is submitted along with a transfer request due to a change of ownership, the Department shall determine whether an inspection is necessary based upon the potential impact to public health, safety, and welfare.**
- D. The Department shall conduct each inspection in compliance with A.R.S. § 41-1009.**
- E. If the Department determines that a ground ambulance service is not in compliance with the requirements in this Article; Article 2, 10, or 11 of this Chapter; or A.R.S. Title 36, Chapter 21.1, the Department may:**
  - 1. Take an enforcement action as described in R9-25-911; or
  - 2. As part of a stipulated agreement under A.R.S. § 36-2245(I), require that the ground ambulance service submit to the Department, within 30 days after written notice from the Department, a corrective action plan acceptable to the Department to address issues of compliance that do not directly affect the health or safety of a patient that:
    - a. Describes how each identified instance of noncompliance will be corrected and reoccurrence prevented;
    - b. Includes a date for correcting each instance of noncompliance that is appropriate to the actions necessary to correct the instance of noncompliance;
    - c. Includes the signature of the individual acting for the certificate holder according to R9-25-102 and date signed; and

- d. If noncompliance is associated with medical direction, EMCT skills or performance, or other issues related to compliance with Article 2 or Article 5 of this Chapter, includes the dated signature of the administrative medical director.

**~~R9-25-911: Ground Ambulance Service Advertising (A.R.S. § 36-2232)~~**

- ~~A. A certificate holder shall not advertise that it provides a type or level of ground ambulance service or operates in a service area different from that granted in the certificate of necessity.~~
- ~~B. When advertising, a certificate holder shall not direct the circumvention of the use of 9-1-1 or another similarly designated emergency telephone number.~~

**~~R9-25-912:R9-25-911. Disciplinary Enforcement Action (Authorized by A.R.S. §§ 36-2234(L), 36-2244, 36-2245, 41-1092.03, 41-1092.11(B))~~**

- ~~A. After notice and opportunity to be heard is given according to the procedures in A.R.S. Title 41, Chapter 6, Article 10, a certificate of necessity may be suspended, revoked, or other disciplinary action taken for the following reasons:~~
  - ~~1. The certificate holder has:~~
    - ~~a. Demonstrated substandard performance; or~~
    - ~~b. Been determined not to be fit and proper by the Director;~~
  - ~~2. The certificate holder has provided false information or documents:~~
    - ~~a. On an application for a certificate of necessity;~~
    - ~~b. Regarding any matter relating to it's ground ambulance vehicles or ground ambulance service; or~~
    - ~~e. To a patient, third-party payor, or other person billed for service; or~~
  - ~~3. The certificate holder has failed to:~~
    - ~~a. Comply with the applicable requirements of A.R.S. Title 36, Chapter 21.1, Articles 1 and 2 or 9 A.A.C. 25; or~~
    - ~~b. Comply with any term of its certificate of necessity or any rates and charges schedule filed by the certificate holder and approved by the Department.~~
- A. The Department may take an action listed in subsection (B) against a ground ambulance service that:
  - 1. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
  - 2. Fails or has failed to comply with any provision in this Article or Article 2, 10, or 11 of this Chapter;
  - 3. Does not submit a corrective action plan, as provided in R9-25-903(A)(6), R9-25-908(G)(4)(a), R9-25-908(H)(3)(a), R9-25-908(K)(1)(c), or R9-25-910(E)(2), that is acceptable to the Department;
  - 4. Does not complete a corrective action plan submitted according to R9-25-903(A)(8) or

R9-25-910(E)(2); or

5. Knowingly or negligently provides false documentation or false or misleading information to the Department or to a patient, third-party payor, or other person billed for service.

**B.** The Department may take the following actions against a ground ambulance service:

1. Except as provided in subsection (B)(3), after notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, suspend:
  - a. The ground ambulance service's certificate of necessity, or
  - b. The certificate of registration of a ground ambulance vehicle operated by the ground ambulance service;
2. After notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, revoke:
  - a. The ground ambulance service's certificate of necessity, or
  - b. The certificate of registration of a ground ambulance vehicle operated by the ground ambulance service;
3. As permitted under A.R.S. §§ 36-2234(N) and 41-1092.11(B), if the Department determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the Department's order, immediately suspend:
  - a. The ground ambulance service's certificate of necessity pending proceedings for revocation or other action, or
  - b. The certificate of registration of a ground ambulance vehicle operated by the ground ambulance service pending proceedings for revocation or other action; or
4. Another enforcement action according to A.R.S. § 36-2245(I), (J), or (K).

**B.C.** In determining the type of disciplinary enforcement action to impose under A.R.S. § 36-2245, the Director shall consider:

1. The severity of the violation relative to public health and safety;
2. The number of violations relative to the annual transport volume of the certificate holder;
3. The nature and circumstances of the violation;
4. Whether the violation was corrected, the manner of correction, and the time-frame involved;
5. The duration of each violation;
6. The frequency and nature of complaints received by the Department about a certificate holder; and
- 5-7. The impact of the penalty or assessment on the provision of ~~ground ambulance service~~ ambulance response or transport in the certificate holder's service area.

**R9-25-912. Renumbered**

**Exhibit 9A. ~~Ambulance Revenue and Cost Report, General Information and Certification~~  
Repealed**

Legal Name of Company: \_\_\_\_\_ CON No. \_\_\_\_\_  
 D.B.A. (Doing Business As): \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_  
 Financial Records Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Mailing Address (If Different): \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Owner/Manager: \_\_\_\_\_  
 Report Contact Person: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_ Ext. \_\_\_\_\_  
 Report for Period From: \_\_\_\_\_ To: \_\_\_\_\_  
 Method of Valuing Inventory: LIFO: ( ) FIFO: ( ) Other (Explain): \_\_\_\_\_

Please ~~attach a list of all affiliated organizations (parents/subsidiaries) that exhibit at least 5% ownership/ vesting.~~

**CERTIFICATION**

*I hereby certify that I have directed the preparation of the Arizona Ambulance Revenue and Cost Report for the facility listed above in accordance with the reporting requirements of the State of Arizona.*

*I have read this report and hereby certify that the information provided is true and correct to the best of my knowledge.*

***This report has been prepared using the accrual basis of accounting.***

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Mail to:**  
 Department of Health Services,  
 Bureau of Emergency Medical Services and Trauma System,  
 Certificate of Necessity and Rates Section  
 150 North 18<sup>th</sup> Avenue, Suite 540, Phoenix, AZ 85007  
 Telephone: (602) 364-3150; Fax: (602) 364-3567

Revised December 2013

## AMBULANCE REVENUE AND COST REPORT

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

STATISTICAL SUPPORT DATA

	(1)	(2)**	(3)	(4)
Line	SUBSCRIPTION	TRANSPORTS	TRANSPORTS	
No.	SERVICE	UNDER	NOT UNDER	
DESCRIPTION	TRANSPORTS	CONTRACT	CONTRACT	TOTALS
01 Number of ALS Billable Runs .....	_____	_____	_____	_____
02 Number of BLS Billable Runs .....	_____	_____	_____	_____
03 Number of Loaded Billable Miles .....	_____	_____	_____	_____
04 Waiting Time (Hr. & Min.) .....	_____	_____	_____	_____
05 Total Canceled (Non-Billable) Runs .....	_____	_____	_____	_____
				Number
				Donated
Volunteer Services: (OPTIONAL)				Hours
06 Paramedic, EMT-I(09), and AEMT .....	_____	_____	_____	_____
07 Emergency Medical Technician (EMT) .....	_____	_____	_____	_____
08 Other Ambulance Attendants .....	_____	_____	_____	_____
09 Total Volunteer Hours .....	_____	_____	_____	_____

\*\*This column reports only those runs where a contracted discount rate was applied. See Page 7 to provide additional information regarding discounted contract runs.

## AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: \_\_\_\_\_

FOR THE PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_

STATISTICAL SUPPORT DATA

		(1)	(2)	(3)
Line		SUBSIDIZED	NON-	
No.	TYPE OF SERVICE	PATIENTS	PATIENTS	TOTALS
01	Number of Advanced Life Support Billable Runs . . . . .	_____	_____	_____
02	Number of Basic Life Support Billable Runs . . . . .	_____	_____	_____
03	Number of Loaded Billable Miles . . . . .	_____	_____	_____
04	Waiting Time (Hours and Minutes) . . . . .	_____	_____	_____
05	Total Canceled (Non-Billable) Runs . . . . .	_____	_____	_____
				Number
	Volunteer Services: (OPTIONAL)			Donated Hours
06	Paramedic, EMT-I(99), and AEMT . . . . .	_____	_____	_____
07	Emergency Medical Technician (EMT) . . . . .	_____	_____	_____
08	Other Ambulance Attendants . . . . .	_____	_____	_____
09	Total Volunteer Hours . . . . .	_____	_____	_____

Note: This page and page 3-1, Routine Operating Revenue, are only for those governmental agencies that apply subsidy to patient billings.

## AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: \_\_\_\_\_

FOR THE PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_

STATEMENT OF INCOME

<u>Line</u> <u>No.</u>	<u>DESCRIPTION</u>	<u>FROM</u>	
<u>Operating Revenue:</u>			
01	Ambulance Service Routine Operating Revenue .....	Page 3 Line 10	\$ _____
<u>Less:</u>			
02	AHCCCS Settlement .....		_____
03	Medicare Settlement .....		_____
04	Contractual Discounts .....	Page 7 Line 22	_____
05	Subscription Service Settlement .....	Page 8 Line 4	_____
06	Other (Attach Schedule) .....		_____
07	Total .....		_____
08	Net Revenue from Ambulance Runs .....		\$ _____
09	Sales of Subscription Service Contracts .....	Page 8 Line 8	_____
10	Total Operating Revenue .....		\$ _____
<u>Ambulance Operating Expenses:</u>			
11	Bad Debt (Includes Subscription Services Bad Debt) .....		\$ _____
12	Wages, Payroll Taxes, and Employee Benefits .....	Page 4 Line 22	_____
13	General and Administrative Expenses .....	Page 5 Line 20	_____
14	Cost of Goods Sold .....	Page 3 Line 15	_____
15	Other Operating Expenses .....	Page 6 Line 28	_____
16	Interest Expense (Attach Schedule IV) .....	Page 14 CI 4 & 5 Line 28	_____
17	Subscription Service Direct Selling .....	Page 8 Line 23	_____
18	Total Operating Expenses .....		_____
19	Ambulance Service Income (Loss) (Line 10 minus Line 18) .....		\$ _____
<u>Other Revenue/Expenses:</u>			
20	Other Operating Revenue and Expenses .....	Page 9 Line 17	\$ _____
21	Non-Operating Revenue and Expense .....		_____
22	Non-Deductible Expenses (Attach Schedule) .....		_____
23	Total Other Revenues/Expenses .....		_____
24	Ambulance Service Income (Loss) - Before Income Taxes .....		\$ _____
<u>Provision for Income Taxes:</u>			
25	Federal Income Tax .....		\$ _____
26	State Income Tax .....		_____
27	Total Income Tax .....		_____
28	Ambulance Service Net Income (Loss) .....		\$ _____

**~~AMBULANCE REVENUE AND COST REPORT~~**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

~~ROUTINE OPERATING REVENUE~~

<b>Line No.</b>	<b>DESCRIPTION</b>	
	Ambulance Service Routine Operating Revenue:	
01	ALS Base Rate .....	\$ _____
02	BLS Base Rate .....	_____
03	Mileage Charge .....	_____
04	Waiting Charge .....	_____
05	Medical Supplies (Gross Charges) .....	_____
06	Nurses Charges .....	_____
07	Total .....	\$ _____
08	Standby Revenue (Attach Schedule) .....	_____
09	Other Ambulance Service Revenue (Attach Schedule) .....	_____
10	Total Ambulance Service Routine Operating Revenue (To Page 2, Line 01) .....	\$ _____

~~COST OF GOODS SOLD: (MEDICAL SUPPLIES)~~

11	Inventory at Beginning of Year .....	_____
12	Plus Purchases .....	_____
13	Plus Other Costs .....	_____
14	Less Inventory at End of Year .....	( _____ )
15	Cost of Goods Sold (To Page 2, Line 14) .....	\$ _____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

ROUTINE OPERATING REVENUE

	(1)	(2)	(3)	
	NON-	SUBSIDIZED		
Line	SUBSIDIZED	SUBSIDIZED		
No.	DESCRIPTION	PATIENTS	PATIENTS	
			TOTALS	
<b>AMBULANCE SERVICE OPERATING REVENUE</b>				
01	ALS Base Rate .....	\$ _____	\$ _____	\$ _____
02	BLS Base Rate .....	_____	_____	_____
03	Mileage Charge .....	_____	_____	_____
04	Waiting Charge .....	_____	_____	_____
05	Medical Supplies (Gross Charges) .....	_____	_____	_____
06	Nurses' Charges .....	_____	_____	_____
07	Total .....	\$ _____	\$ _____	\$ _____
08	Standby Revenue (Attach Schedule) .....	_____	_____	_____
09	Other Ambulance Service Revenue (Attach Schedule) .....	_____	_____	_____
10	Total Ambulance Service Routine Operating Revenue (Column 3 to Page 2, Line 01) .....	_____	_____	\$ _____
<b>Less:</b>				
11	AHCCCS Settlement .....	\$ _____	\$ _____	\$ _____
12	Medicare Settlement .....	_____	_____	_____
13	Subsidy .....	_____	XXXXXXXXXXXXXX	_____
14	Other (Attach Schedule) .....	_____	_____	_____
15	Total Settlements (Column 3 to Page 2, Line 06) .....	\$ _____	\$ _____	\$ _____
<b>Cost of Goods Sold:</b>				
16	Inventory at Beginning of Year .....	_____	_____	\$ _____
17	Plus Purchases .....	_____	_____	_____
18	Plus Other Costs .....	_____	_____	_____
19	Less Inventory at End of Year .....	_____	_____	( _____ )
20	Cost of Goods Sold (Column 3 to Page 2, Line 14) .....	_____	_____	\$ _____

## AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: \_\_\_\_\_

FOR THE PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_

WAGES, PAYROLL TAXES, AND EMPLOYEE BENEFITS

Line No.	DESCRIPTION	No. of *F.T.E.s	AMOUNT
01	Gross Wages - OFFICERS/OWNERS (Attach Schedule I, Page 10, Line 7) . . . .		\$ _____
02	Payroll Taxes . . . . .		_____
03	Employee Fringe Benefits . . . . .		_____
04	Total . . . . .		\$ _____
05	Gross Wages - MANAGEMENT (Attach Schedule H) . . . . .		\$ _____
06	Payroll Taxes . . . . .		_____
07	Employee Fringe Benefits . . . . .		_____
08	Total . . . . .		\$ _____
<b>Gross Wages - AMBULANCE PERSONNEL (Attach Schedule H)</b>			
	**Casual Labor	Wages	
09	Paramedic, EMT I(99), and AEMT . . . . .		\$ _____
10	Emergency Medical Technician (EMT) . . . . .		_____
11	Nurses . . . . .		_____
12	Payroll Taxes . . . . .		_____
13	Employee Fringe Benefits . . . . .		_____
14	Total . . . . .		\$ _____
<b>Gross Wages - OTHER PERSONNEL (Attach Schedule H)</b>			
15	Dispatch . . . . .		\$ _____
16	Mechanics . . . . .		_____
17	Office and Clerical . . . . .		_____
18	Other . . . . .		_____
19	Payroll Taxes . . . . .		_____
20	Employee Fringe Benefits . . . . .		_____
21	Total . . . . .		\$ _____
22	Total F.T.E.s' Wages, Payroll Taxes, & Employee Benefits (To Page 2, Line 12) . .		\$ _____

\* Full-time equivalents (F.T.E.) is the sum of all hours for which employee wages were paid during the year divided by 2,080.

\*\* The sum of Casual Labor (wages paid on a per-run basis) plus Wages paid is entered in Column 2 by line item. However, when calculating F.T.E.s, do not include casual labor hours worked or expenses incurred.

## AMBULANCE REVENUE AND COST REPORT

AMBULANCE SERVICE ENTITY: \_\_\_\_\_

FOR THE PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_

WAGES, PAYROLL TAXES, AND EMPLOYEE BENEFITS - I

Line No.	DESCRIPTION	(1) No. of *F.T.E.s	(2) Total Expenditure	(3) Allocation Percentage	(4) Ambulance Amount
01	Gross Wages - Management (Attach Schedule II) .....		\$		
02	Payroll Taxes .....				
03	Employee Fringe Benefits .....				
04	Total .....		\$		

**Gross Wages - Ambulance Personnel (Attach Schedule):**

\*\*Contractual Wages

05	Paramedic, EMT-I(99), and IEMT AEMT ..		\$		
06	Emergency Medical Technician (EMT) .....				
07	Nurses .....				
08	Drivers .....				
09	Payroll Taxes .....				
10	Employee Fringe Benefits .....				
11	Total .....		\$		

**Gross Wages - Other Personnel (Attach Schedule II):**

12	Dispatch .....		\$		
13	Mechanics .....				
14	Office and Clerical .....				
15	Other .....				
16	Payroll Taxes .....				
17	Employee Fringe Benefits .....				
18	Total .....		\$		
19	Total F.T.E.s' Wages, Payroll Taxes, and Employee Benefits (To Page 2, Line 12) .....		\$		

\* Full-Time Equivalents (F.T.E.) is the sum of all hours for which employee wages were paid during the year divided by 2,080.

\*\* The sum of Contractual + Wages paid is entered in Column 2 by line item. However, when calculating F.T.E.s, do not include contractual hours worked or expenses incurred.

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

WAGES, PAYROLL TAXES, AND EMPLOYEE BENEFITS

<u>Line</u> <u>No.</u>	<u>DESCRIPTION</u>	<u>Basis of Allocations</u>
01	Gross Wages - Management .....	
02	Payroll Taxes .....	
03	Employee Fringe Benefits .....	
04	Total .....	

<u>Gross Wages - Ambulance Personnel:</u>		<u>Contractual</u>	<u>Wages</u>
05	Paramedic, EMT-I(99), and AEMT .....		
06	Emergency Medical Technician (EMT) .....		
07	Nurses .....		
08	Drivers .....		
09	Payroll Taxes .....		
10	Employee Fringe Benefits .....		
11	Total .....		

<u>Gross Wages - Other Personnel:</u>			
12	Dispatch .....		
13	Mechanics .....		
14	Office and Clerical .....		
15	Other .....		
16	Payroll Taxes .....		
17	Employee Fringe Benefits .....		
18	Total .....		

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

~~GENERAL AND ADMINISTRATIVE EXPENSES~~

**Line**

**No. DESCRIPTION**

~~Professional Services:~~

01	Legal Fees .....	\$ _____
02	Collection Fees .....	_____
03	Accounting and Auditing .....	_____
04	Data Processing Fees .....	_____
05	Other (Attach Schedule) .....	_____
06	Total .....	\$ _____

~~Travel and Entertainment:~~

07	Meals and Entertainment .....	\$ _____
08	Transportation - Other Company Vehicles .....	_____
09	Travel .....	_____
10	Other (Attach Schedule) .....	_____
11	Total .....	\$ _____

~~Other General and Administrative:~~

12	Office Supplies .....	\$ _____
13	Postage .....	_____
14	Telephone .....	_____
15	Advertising .....	_____
16	Professional Liability Insurance .....	_____
17	Dues and Subscriptions .....	_____
18	Other (Attach Schedule) .....	_____
19	Total .....	\$ _____
20	Total General and Administrative Expenses (To Page 2, Line 13) .....	\$ _____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

GENERAL AND ADMINISTRATIVE EXPENSES

<u>Line No.</u>	<u>DESCRIPTION</u>	<u>(1) Total Expenditure</u>	<u>(2) Allocation Percentage</u>	<u>(3) Ambulance Amount</u>
<b>Professional Services:</b>				
01	Legal Fees .....	\$ _____	_____	\$ _____
02	Collection Fees .....	_____	_____	_____
03	Accounting and Auditing .....	_____	_____	_____
04	Data Processing Fees .....	_____	_____	_____
05	Other (Attach Schedule) .....	_____	_____	_____
06	Total .....	\$ _____	_____	\$ _____
<b>Travel and Entertainment:</b>				
07	Meals and Entertainment .....	\$ _____	_____	\$ _____
08	Transportation - Other Company Vehicles .....	_____	_____	_____
09	Travel .....	_____	_____	_____
10	Other (Attach Schedule) .....	_____	_____	_____
11	Total .....	\$ _____	_____	\$ _____
<b>Other General and Administrative:</b>				
12	Office Supplies .....	\$ _____	_____	\$ _____
13	Postage .....	_____	_____	_____
14	Telephone .....	_____	_____	_____
15	Advertising .....	_____	_____	_____
16	Professional Liability Insurance .....	_____	_____	_____
17	Dues and Subscriptions .....	_____	_____	_____
18	Other (Attach Schedule) .....	_____	_____	_____
19	Total .....	\$ _____	_____	\$ _____
20	Total General & Administrative Expenses (to Page 2, Line 13)		\$ _____	\$ _____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

GENERAL AND ADMINISTRATIVE EXPENSES (cont.)

Line No.	DESCRIPTION	Basis of Allocations
<b>Professional Services:</b>		
01	Legal Fees .....	_____
02	Collection Fees .....	_____
03	Accounting and Auditing .....	_____
04	Data Processing Fees .....	_____
05	Other (Attach Schedule) .....	_____
06	Total .....	_____
<b>Travel and Entertainment:</b>		
07	Meals and Entertainment .....	_____
08	Transportation - Other Company Vehicles .....	_____
09	Travel .....	_____
10	Other (Attach Schedule) .....	_____
11	Total .....	_____
<b>Other General and Administrative:</b>		
12	Office Supplies .....	_____
13	Postage .....	_____
14	Telephone .....	_____
15	Advertising .....	_____
16	Professional Liability Insurance .....	_____
17	Dues and Subscriptions .....	_____
18	Other (Attach Schedule) .....	_____
19	Total .....	_____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

~~OTHER OPERATING EXPENSES~~

**Line**  
**No.** ~~OTHER OPERATING EXPENSES~~

~~Depreciation and Amortization:~~

01 Depreciation (Attach Schedule III) (From Line 20, Col I, Page 13) . . . . . \$ \_\_\_\_\_  
02 Amortization . . . . . \_\_\_\_\_  
03 Total . . . . . \$ \_\_\_\_\_

04 Rent/Lease (Attach Schedule III) (From Line 20, Col K, Page 13) . . . . . \$ \_\_\_\_\_

~~Building/Station Expense:~~

05 Building and Cleaning Supplies . . . . . \$ \_\_\_\_\_  
06 Utilities . . . . . \_\_\_\_\_  
07 Property Taxes . . . . . \_\_\_\_\_  
08 Property Insurance . . . . . \_\_\_\_\_  
09 Repairs and Maintenance . . . . . \_\_\_\_\_  
10 Other (Attach Schedule) . . . . . \_\_\_\_\_  
11 Total . . . . . \$ \_\_\_\_\_

~~Vehicle Expense - Ambulance Units:~~

12 License/Registration . . . . . \$ \_\_\_\_\_  
13 Fuel . . . . . \_\_\_\_\_  
14 General Vehicle Service and Maintenance . . . . . \_\_\_\_\_  
15 Major Repairs . . . . . \_\_\_\_\_  
16 Insurance - Service Vehicles . . . . . \_\_\_\_\_  
17 Other (Attach Schedule) . . . . . \_\_\_\_\_  
18 Total . . . . . \$ \_\_\_\_\_

~~Other Expenses:~~

19 Dispatch . . . . . \_\_\_\_\_  
20 Education/Training . . . . . \_\_\_\_\_  
21 Uniforms and Uniform Cleaning . . . . . \_\_\_\_\_  
22 Meals and Travel for Ambulance Personnel . . . . . \_\_\_\_\_  
23 Maintenance Contracts . . . . . \_\_\_\_\_  
24 Minor Equipment - Not Capitalized . . . . . \_\_\_\_\_  
25 Ambulance Supplies - Nonchargeable . . . . . \_\_\_\_\_  
26 Other (Attach Schedule) . . . . . \_\_\_\_\_  
27 Total . . . . . \$ \_\_\_\_\_  
28 Total Other Operating Expenses (To Page 2, Line 15) . . . . . \$ \_\_\_\_\_

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

OTHER OPERATING EXPENSES

	(1)	(2)	(3)
	Total	Allocation	Ambulance
<u>OTHER OPERATING EXPENSES</u>	<u>Expenditure</u>	<u>Percentage</u>	<u>Amount</u>
<b>Depreciation and Amortization:</b>			
Depreciation (Attach Schedule III) (From Line 20, Col I, Page 12) . . . . .	\$ _____	_____	_____
Amortization . . . . .	_____	_____	_____
Total . . . . .	\$ _____	_____	_____
Rent/Lease (Attach Schedule III) Line 20, Col K, Page 12 . . . . .	\$ _____	_____	_____
<b>Building/Station Expense:</b>			
Building and Cleaning Supplies . . . . .	\$ _____	_____	_____
Utilities . . . . .	_____	_____	_____
Property Taxes . . . . .	_____	_____	_____
Property Insurance . . . . .	_____	_____	_____
Repairs and Maintenance . . . . .	_____	_____	_____
Other (Attach Schedule) . . . . .	_____	_____	_____
Total . . . . .	\$ _____	_____	_____
<b>Vehicle Expense - Ambulance Units:</b>			
License/Registration . . . . .	\$ _____	_____	_____
Fuel . . . . .	_____	_____	_____
General Vehicle Service and Maintenance . . . . .	_____	_____	_____
Major Repairs . . . . .	_____	_____	_____
Insurance - Service Vehicles . . . . .	_____	_____	_____
Other (Attach Schedule) . . . . .	_____	_____	_____
Total . . . . .	\$ _____	_____	_____
<b>Other Expenses:</b>			
Dispatch . . . . .	\$ _____	_____	_____
Education/Training . . . . .	_____	_____	_____
Uniforms and Uniform Cleaning . . . . .	_____	_____	_____
Meals and Travel for Ambulance Personnel . . . . .	_____	_____	_____
Maintenance Contracts . . . . .	_____	_____	_____
Minor Equipment - Not Capitalized . . . . .	_____	_____	_____
Ambulance Supplies - Nonchargeable . . . . .	_____	_____	_____
Other (Attach Schedule) . . . . .	_____	_____	_____
Total . . . . .	\$ _____	_____	_____
Total Other Operating Expenses (To Page 2, Line 15) . . . . .	\$ _____	_____	_____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

OTHER OPERATING EXPENSES

<u>Line</u> <u>No.</u>	<u>OTHER OPERATING EXPENSES</u>	<u>Basis of Allocations</u>
<b>Depreciation and Amortization:</b>		
01	Depreciation .....	_____
02	Amortization .....	_____
03	Total .....	_____
04	Rent/Lease .....	_____
<b>Building/Station Expense:</b>		
05	Building and Cleaning Supplies .....	_____
06	Utilities .....	_____
07	Property Taxes .....	_____
08	Property Insurance .....	_____
09	Repairs and Maintenance .....	_____
10	Other (Attach Schedule) .....	_____
11	Total .....	_____
<b>Vehicle Expense - Ambulance Units:</b>		
12	License/Registration .....	_____
13	Fuel .....	_____
14	General Vehicle Service and Maintenance .....	_____
15	Major Repairs .....	_____
16	Insurance - Service Vehicles .....	_____
17	Other (Attach Schedule) .....	_____
18	Total .....	_____
<b>Other Expenses:</b>		
19	Dispatch .....	_____
20	Education/Training .....	_____
21	Uniforms and Uniform Cleaning .....	_____
22	Meals and Travel for Ambulance Personnel .....	_____
23	Maintenance Contracts .....	_____
24	Minor Equipment - Not Capitalized .....	_____
25	Ambulance Supplies - Nonchargeable .....	_____
26	Other (Attach Schedule) .....	_____
27	Total .....	_____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

DETAIL OF CONTRACTUAL ALLOWANCES

<u>Line No.</u>	<u>Name of Contracting Entity</u>	<u>Total Billable Runs</u>	<u>Gross Billing</u>	<u>Percent Discount</u>	<u>Allowance</u>
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22	<b>Total (To Page 2, Line 4)</b>				

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

\_\_\_\_\_  
SUBSCRIPTION SERVICE REVENUE AND  
DIRECT SELLING EXPENSES  
 \_\_\_\_\_

<b>Line</b>	<b>No.</b>	<b>Description</b>	<b>To</b>	
01		Billings at Fully Established Rate .....		\$ _____
		Less:		
02		AHCCCS Settlement .....		
03		Medicare Settlement .....		
04		Subscription Service Settlements .....	(To Page 2, Line 5)	
05		Subscription Service Bad Debt .....		
06		Total .....		\$ _____
07		Net Revenue from Subscription Service Runs .....		
08		Sales of Subscription Service .....	(To Page 2, Line 9)	
09		Other Revenue (Attach Schedule) .....		
10		Total Subscription Service Revenue .....		\$ _____
		<b>Direct Expenses Incurred Selling Subscription Contracts:</b>		
11		Salaries/Wages .....		\$ _____
12		Payroll Taxes .....		
13		Employee Fringe Benefits .....		
14		Professional Services .....		
15		Contract Labor .....		
16		Travel .....		
17		Other General and Administrative Expenses .....		
18		Depreciation/Amortization .....		
19		Rent/Lease .....		
20		Building/Station Expense .....		
21		Transportation/Vehicles .....		
22		Other (Attach Schedule) .....		
23		Total Subscription Service Expenses .....	(To Page 2, Line 17)	\$ _____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

\_\_\_\_\_  
OTHER OPERATING REVENUES AND EXPENSES  
 \_\_\_\_\_

**Line**  
**No. DESCRIPTION**

\_\_\_\_\_  
**Other Operating Revenues:**

01	Supportive Funding - Local (Attach Schedule) .....	\$ _____
02	Grant Funds - State (Attach Schedule) .....	_____
03	Grant Funds - Federal (Attach Schedule) .....	_____
04	Grant Funds - Other (Attach Schedule) .....	_____
05	Patient Finance Charges .....	_____
06	Patient Late Payment Charges .....	_____
07	Interest Earned - Related Person/Organization .....	_____
08	Interest Earned - Other .....	_____
09	Gain on Sale of Operating Property .....	_____
10	Other: _____ .....	_____
11	Other: _____ .....	_____
12	Total Operating Revenue .....	\$ _____

\_\_\_\_\_  
**Other Operating Expenses:**

13	Loss on Sale of Operating Property .....	\$ _____
14	Other: _____ .....	_____
15	Other: _____ .....	_____
16	Total Other Operating Expenses .....	\$ _____
17	Net Other Operating Revenues and Expenses (To Page 2, Line 20) .....	\$ _____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

- ~~DETAIL OF SALARIES/WAGES~~
- ~~OFFICERS/OWNERS~~
- ~~SCHEDULE 1~~

**Wages Paid by Category**

Line No.	Name	Title	% of Ownership	Management	#FTE	EMCT	#FTE	Office	#FTE	Other	<u>Totals</u>		
											#FTE	Wages Paid To Owners	
01	_____	_____	_____	\$_____	_____	\$_____	_____	\$_____	_____	\$_____	_____	\$_____	_____
02	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
03	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
04	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
05	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
06	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____
07	<b>TOTAL</b>	_____	_____	\$_____	_____	\$_____	_____	\$_____	_____	\$_____	_____	\$_____	_____

\* Full time equivalents (F.T.E.) is the sum of all hours for which employee wages were paid during the year divided by 2080.

1 Total wages paid to owners to Page 4 Col 2 Line 01

2 Total FTEs to Page 4 Col 1 Line 01

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

\_\_\_\_ OPERATING EXPENSES  
\_\_\_\_ DETAIL OF SALARIES/WAGES  
\_\_\_\_ SCHEDULE H

Line

No. ~~Detail of Salaries/Wages - Other Than Officers/Owners~~

**01 MANAGEMENT:** \_\_\_\_\_ **METHOD OF COMPENSATION:**

<u>Certification</u> <u>and/or Title</u>	<u>Scheduled Shifts</u> <u>(I.e. 40 or 60 hours a week)</u>	<u>Hourly</u> <u>Wage</u>	<u>Annual</u> <u>Salary</u>	<u>\$s Per Run</u> <u>or Shift</u>
---	--	------------------------------	--------------------------------	---------------------------------------

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**02 AMBULANCE PERSONNEL:**

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**03 OTHER PERSONNEL:**

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

**DEPRECIATION AND/OR RENT/LEASE EXPENSE  
SCHEDULE III**

**AMBULANCE VEHICLES AND  
ACCESSORIAL EQUIPMENT ONLY**

	A	B	C	D	E	F	G	H	I	J	K
Line No.	Description of Property	Date Placed in Service	Cost or Other Basis	Business Use Percent	Basis for Depreciation	Method	Recovery Period	Depreciation Prior Years	Current Year Depreciation	Remaining Basis	Rent/Lease Amount <sup>1,2</sup>
01											
02											
03											
04											
05											
06											
07											
08											
09											
10											
11											
12											
13											
14											
15											
16											
17											
18											
19											
20	<b>SUBTOTAL</b>	XXX	XXX	XXX	XXX	XXX	XXX	XXX	+	XXX	2

\* Complete Description of property, date placed in service, and rent/lease amount only.

1 To Page 13, Line 19, Column I

2 To Page 13, Line 19, Column K

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

— DEPRECIATION AND/OR RENT/LEASE EXPENSE ALL OTHER ITEMS  
 — SCHEDULE III

	A	B	C	D	E	F	G	H	I	J	K
Line No.	Description of Property	Date Placed in Service	Cost or Other Basis	Business Use Percent	Basis for Depreciation	Method	Recovery Period	Depreciation Prior Years	Current Year Depreciation	Remaining Basis	Rent/Lease Amount*
01											
02											
03											
04											
05											
06											
07											
08											
09											
10											
11											
12											
13											
14											
15											
16											
17											
18	SUBTOTAL	XXX	XXX	XXX	XXX	XXX	XXX	XXX		XXX	
19	SUBTOTAL from Page 12, Line 20	XXX	XXX	XXX	XXX	XXX	XXX	XXX		XXX	
20	SUM of Line 18 and 19	XXX	XXX	XXX	XXX	XXX	XXX	XXX	3	XXX	4

\* — Complete Description of property, date placed in service, and rent/lease amount only.  
 3 — To Page 6, Line 01  
 4 — To Page 6, Line 04

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

**DETAIL OF INTEREST - Schedule IV**

Line No.	Description	(1)	(2)	(3)	(4)	(5)
		Interest Rate	Beginning of Period	End of Period	Principal Balance	Interest Expense Related Persons or Organizations
<b>Service Vehicles &amp; Accessorial Equipment</b>						
Name of Payee: _____						
01	_____	_____ %	\$ _____	\$ _____	\$ _____	\$ _____
02	_____	_____	_____	_____	_____	_____
03	_____	_____	_____	_____	_____	_____
04	_____	_____	_____	_____	_____	_____
<b>Communication Equipment</b>						
Name of Payee: _____						
05	_____	_____ %	\$ _____	\$ _____	\$ _____	\$ _____
06	_____	_____	_____	_____	_____	_____
07	_____	_____	_____	_____	_____	_____
<b>Other Property and Equipment</b>						
Name of Payee: _____						
08	_____	_____ %	\$ _____	\$ _____	\$ _____	\$ _____
09	_____	_____	_____	_____	_____	_____
10	_____	_____	_____	_____	_____	_____
<b>Working Capital</b>						
Name of Payee: _____						
11	_____	_____ %	\$ _____	\$ _____	\$ _____	\$ _____
12	_____	_____	_____	_____	_____	_____
13	_____	_____	_____	_____	_____	_____
<b>Other</b>						
Name of Payee: _____						
14	_____	_____ %	\$ _____	\$ _____	\$ _____	\$ _____
15	TOTAL		\$ _____	\$ _____	\$ _____	\$ _____

(To Page 2, Column 2, Line 16)

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

\_\_\_\_\_  
**BALANCE SHEET**  
\_\_\_\_\_

\_\_\_\_\_  
**ASSETS**

\_\_\_\_\_  
CURRENT ASSETS

01 Cash \_\_\_\_\_ \$ \_\_\_\_\_  
02 Accounts Receivable \_\_\_\_\_  
03 Less: Allowance for Doubtful Accounts \_\_\_\_\_  
04 Inventory \_\_\_\_\_  
05 Prepaid Expenses \_\_\_\_\_  
06 Other Current Assets \_\_\_\_\_  
  
07 TOTAL CURRENT ASSETS \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_  
PROPERTY & EQUIPMENT

08 Less: Accumulated Depreciation \_\_\_\_\_ \$ \_\_\_\_\_

09 OTHER NONCURRENT ASSETS \_\_\_\_\_ \$ \_\_\_\_\_

10 TOTAL ASSETS \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_  
**LIABILITIES AND EQUITY**

\_\_\_\_\_  
CURRENT LIABILITIES

11 Accounts Payable \_\_\_\_\_ \$ \_\_\_\_\_  
12 Current Portion of Notes Payable \_\_\_\_\_  
13 Current Portion of Long Term Debt \_\_\_\_\_  
14 Deferred Subscription Income \_\_\_\_\_  
15 Accrued Expenses and Other \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
  
18 TOTAL CURRENT LIABILITIES \_\_\_\_\_ \$ \_\_\_\_\_

19 NOTES PAYABLE \_\_\_\_\_

20 LONG TERM DEBT OTHER \_\_\_\_\_

21 TOTAL LONG-TERM DEBT \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_  
EQUITY AND OTHER CREDITS

\_\_\_\_\_  
Paid-in Capital:

22 Common Stock \_\_\_\_\_ \$ \_\_\_\_\_  
23 Paid-In Capital in Excess of Par Value \_\_\_\_\_  
24 Contributed Capital \_\_\_\_\_  
25 Retained Earnings \_\_\_\_\_  
26 Fund Balances \_\_\_\_\_

27 TOTAL EQUITY \_\_\_\_\_ \$ \_\_\_\_\_

28 TOTAL LIABILITIES & EQUITY \_\_\_\_\_ \$ \_\_\_\_\_

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

\_\_\_\_\_**STATEMENT OF CASH FLOWS**\_\_\_\_\_

\_\_\_\_\_**OPERATING ACTIVITIES:**

01	Net (loss) Income	\$	_____
	Adjustments to reconcile net income to net cash provided by operating activities:		
02	Depreciation Expense		_____
03	Deferred Income Tax		_____
04	Loss (gain) on Disposal of Property and Equipment		_____
	(Increase) Decrease in:		
05	Accounts Receivable		_____
06	Inventories		_____
07	Prepaid Expenses		_____
	(Increase) Decrease in:		
08	Accounts Payable		_____
09	Accrued Expenses		_____
10	Deferred Subscription Income		_____
11	Net Cash Provided (Used) by Operating Activities	\$	_____

\_\_\_\_\_**INVESTING ACTIVITIES:**

12	Purchases of Property and Equipment	\$	_____
13	Proceeds from Disposal of Property and Equipment		_____
14	Purchases of Investments		_____
15	Proceeds from Disposal of Investments		_____
16	Loans Made		_____
17	Collections on Loans		_____
18	Other		_____
19	Net Cash Provided (Used) by Investing Activities	\$	_____

\_\_\_\_\_**FINANCING ACTIVITIES:**

	New Borrowings:		
20	Long-Term	\$	_____
21	Short-Term		_____
	Debt Reduction:		
22	Long-Term		_____
23	Short-Term		_____
24	Capital Contributions		_____
25	Dividends paid		_____
26	Net Cash Provided (Used) by Financing Activities	\$	_____
27	Net Increase (Decrease) in Cash	\$	_____
28	Cash at Beginning of Year	\$	_____
29	Cash at End of Year	\$	_____

\_\_\_\_\_**SUPPLEMENTAL DISCLOSURES:**

	Non-cash Investing and Financing Transactions:		
31	_____	\$	_____
32	_____		_____
33	Interest Paid (Net of Amounts Capitalized)		_____
34	Income Taxes Paid		_____

**Department of Health Services**  
**~~Annual Ambulance Financial Report~~**

**CERTIFICATE  
ON**

I hereby certify that I have prepared the enclosed report in accordance with the provisions of the Arizona Statutes.  
I hereby certify that the information provided is true and correct to the best of my knowledge.

**This report has been prepared using the accrual basis of accounting.**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_  
Director of Emergency Medical Services and Trauma System  
Certificate of Necessity and Rates Section

150 North 18<sup>th</sup> Avenue, Suite 540

Phoenix, AZ 85007

Telephone: (602) 364-3150

Fax: (602) 364-3567

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

STATISTICAL SUPPORT DATA

	(1)	*(2)	(3)	(4)
<b>Line</b>	<b>SUBSCRIPTION</b>	<b>TRANSPORTS</b>	<b>TRANSPORTS</b>	
<b>No. DESCRIPTION</b>	<b>SERVICE</b>	<b>UNDER</b>	<b>NOT UNDER</b>	
	<b>TRANSPORTS</b>	<b>CONTRACT</b>	<b>CONTRACT</b>	<b>TOTALS</b>
01	Number of ALS Billable Transports: _____			
02	Number of BLS Billable Transports: _____			
03	Number of Loaded Billable Miles: _____			
04	Waiting Time (Hr. & Min.): _____			
05	Canceled (Non-Billable) Runs: _____			

AMBULANCE SERVICE ROUTINE OPERATING REVENUE

06	ALS Base Rate Revenue .....	\$	_____
07	BLS Base Rate Revenue .....		_____
08	Mileage Charge Revenue .....		_____
09	Waiting Charge Revenue .....		_____
10	Medical Supplies Charge Revenue .....		_____
11	Nurses Charge Revenue .....		_____
12	Standby Charge Revenue (Attach Schedule) .....		_____
13	<b>TOTAL AMBULANCE SERVICE ROUTINE OPERATING REVENUE .....</b>	\$	_____

SALARY AND WAGE EXPENSE DETAIL

<b>GROSS WAGES:</b>		<b>**No. of F.T.E.s</b>	
14	Management .....	\$	_____
15	Paramedics, EMT-I(09)s, and IEMTs AEMTs .....	\$	_____
16	Emergency Medical Technician (EMT) .....	\$	_____
17	Other Personnel .....	\$	_____
18	Payroll Taxes and Fringe Benefits - All Personnel .....	\$	_____

\*This column reports only those runs where a contracted discount rate was applied.

\*\*Full-time equivalents (F.T.E.) is the sum of all hours for which employees' wages were paid during the year divided by 2080.

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

SCHEDULE OF REVENUES AND EXPENSES

<b>Line</b>	<b>No. DESCRIPTION</b>	<b>FROM</b>	
<b>Operating Revenues:</b>			
01	Total Ambulance Service Operating Revenue .....	Page 2, Line 13	\$ _____
<b>Settlement Amounts:</b>			
02	AHCCCS .....		( _____ )
03	Medicare .....		( _____ )
04	Subscription Service .....		( _____ )
05	Contractual .....		( _____ )
06	Other .....		( _____ )
07	Total (Sum of Lines 02 through 06) .....		( _____ )
08	Total Operating Revenue (Line 01 minus Line 07) .....		\$ _____
<b>Operating Expenses:</b>			
09	Bad Debt .....		
10	Total Salaries, Wages, and Employee-Related Expenses .....		\$ _____
11	Professional Services .....		
12	Travel and Entertainment .....		
13	Other General Administrative .....		
14	Depreciation .....		
15	Rent/Leasing .....		
16	Building/Station .....		
17	Vehicle Expense .....		
18	Other Operating Expense .....		
19	Cost of Medical Supplies Charged to Patients .....		
20	Interest .....		
21	Subscription Service Sales Expense .....		
22	Total Operating Expense (Sum of Lines 09 through 21) .....		
23	Total Operating Income or Loss (Line 08 minus Line 22) .....		\$ _____
24	Subscription Contract Sales .....		
25	Other Operating Revenue .....		
26	Local Supportive Funding .....		
27	Other Non-Operating Income (Attach Schedule) .....		
28	Other Non-Operating Expense (Attach Schedule) .....		
29	NET INCOME/(LOSS) (Line 23 plus Sum of Lines 24 through 28) .....		\$ _____

**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

\_\_\_\_\_  
**BALANCE SHEET**  
 \_\_\_\_\_

\_\_\_\_\_  
**ASSETS**  
 \_\_\_\_\_  
**CURRENT ASSETS**

01	Cash	\$	_____
02	Accounts Receivable		_____
03	Less: Allowance for Doubtful Accounts		_____
04	Inventory		_____
05	Prepaid Expenses		_____
06	Other Current Assets		_____
07	<b>TOTAL CURRENT ASSETS</b>	\$	_____

\_\_\_\_\_  
**PROPERTY & EQUIPMENT**

08	Less: Accumulated Depreciation	\$	_____
09	<b>OTHER NONCURRENT ASSETS</b>	\$	_____
10	<b>TOTAL ASSETS</b>	\$	_____

\_\_\_\_\_  
**LIABILITIES AND EQUITY**

\_\_\_\_\_  
**CURRENT LIABILITIES**

11	Accounts Payable	\$	_____
12	Current Portion of Notes Payable		_____
13	Current Portion of Long-term Debt		_____
14	Deferred Subscription Income		_____
15	Accrued Expenses and Other		_____
16			_____
17			_____
18	<b>TOTAL CURRENT LIABILITIES</b>	\$	_____

19	<b>NOTES PAYABLE</b>		_____
20	<b>LONG TERM DEBT OTHER</b>		_____

21	<b>TOTAL LONG TERM DEBT</b>	\$	_____
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\_\_\_\_\_  
**EQUITY AND OTHER CREDITS**

\_\_\_\_\_  
**Paid in Capital:**

22	Common Stock	\$	_____
23	Paid In Capital in Excess of Par Value		_____
24	Contributed Capital		_____
25	Retained Earnings		_____
26	Fund Balances		_____

27	<b>TOTAL EQUITY</b>	\$	_____
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28	<b>TOTAL LIABILITIES &amp; EQUITY</b>	\$	_____
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**AMBULANCE REVENUE AND COST REPORT**

**AMBULANCE SERVICE ENTITY:** \_\_\_\_\_

**FOR THE PERIOD FROM:** \_\_\_\_\_ **TO:** \_\_\_\_\_

**STATEMENT OF CASH FLOWS**

**OPERATING ACTIVITIES:**

01	Net (loss) Income	\$	_____
	Adjustments to reconcile net income to net cash provided by operating activities:		
02	Depreciation Expense		_____
03	Deferred Income Tax		_____
04	Loss (gain) on Disposal of Property and Equipment		_____
	(Increase) Decrease in:		
05	Accounts Receivable		_____
06	Inventories		_____
07	Prepaid Expenses		_____
	(Increase) Decrease in:		
08	Accounts Payable		_____
09	Accrued Expenses		_____
10	Deferred Subscription Income		_____
11	Net Cash Provided (Used) by Operating Activities	\$	_____

**INVESTING ACTIVITIES:**

12	Purchases of Property and Equipment	_____	
13	Proceeds from Disposal of Property and Equipment	_____	
14	Purchases of Investments	_____	
15	Proceeds from Disposal of Investments	_____	
16	Loans Made	_____	
17	Collections on Loans	_____	
18	Other	_____	
19	Net Cash Provided (Used) by Investing Activities	\$	_____

**FINANCING ACTIVITIES:**

	New Borrowings:		
20	Long-Term		_____
21	Short-Term		_____
	Debt Reduction:		
22	Long-Term		_____
23	Short-Term		_____
24	Capital Contributions		_____
25	Dividends paid		_____
26	Net Cash Provided (Used) by Financing Activities	\$	_____
27	Net Increase (Decrease) in Cash	\$	_____
28	Cash at Beginning of Year	\$	_____
29	Cash at End of Year	\$	_____

**SUPPLEMENTAL DISCLOSURES:**

	Non-cash Investing and Financing Transactions:		
31	_____	\$	_____
32	_____		_____
33	Interest Paid (Net of Amounts Capitalized)		_____
34	Income Taxes Paid		_____

## INSTRUCTIONS

**Page 1: ~~COVER~~**

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- ~~1. Enter the name of the ambulance service on the line "Reporting Ambulance Service."~~
- ~~2. Print the name and title of the ambulance service's authorized representative on the lines indicated; enter the date of signature; authorized representative must sign the report.~~

**Page 2: ~~STATISTICAL SUPPORT DATA and ROUTINE OPERATING REVENUE~~**

Enter the ambulance service's business name and the appropriate reporting period.

**Statistical Support Data:**

- ~~— Lines 01-02: Enter the number of billable ALS and BLS transports for each of the three categories. Subscription Service Transports should not be included with Transports Under Contract.~~
- ~~— Lines 03-04: Enter the total of patient loaded transport miles and waiting times for each of the transport categories.~~
- ~~— Line 05: List TOTAL of canceled/non-billable runs.~~

**Ambulance Service Routine Operating Revenue:**

- ~~— Line 06: Enter the total amount of all ALS Base Rate gross billings.~~
- ~~— Line 07: Enter the total amount of all BLS Base Rate gross billings.~~
- ~~— Line 08: Enter the total of Mileage Charge gross billings.~~
- ~~— Line 09: Enter the total Waiting Time gross billings.~~
- ~~— Line 10: Enter the total of all gross billings of Medical Supplies to patients.~~
- ~~— Line 11: RESERVED FOR FUTURE USE – Charges for Nurses currently are not allowed.~~
- ~~— Line 12: Enter the total of all Standby Time charges. (Attach a schedule showing sources.)~~
- ~~— Line 13: Add the totals from Line 06 through Line 12. Enter sum on Line 13.~~

**Salary and Wage Expense Detail:**

- ~~— Line 14: Enter the total salary amount allocated and paid to Management of the ambulance service.~~
- ~~— Line 15: Enter the total salary amount allocated and paid to Paramedics, EMT-I(99)s, and HEMTs AEMTs~~
- ~~— Line 16: Enter the total salary amount allocated and paid to Emergency Medical Technicians (EMTs).~~
- ~~— Line 17: Enter the total salary amount allocated and paid to Other Personnel involved with the ambulance service. (Examples: Dispatch, Mechanics, Office)~~
- ~~— Line 18: Enter the total allocated amount of Payroll Taxes and Fringe Benefits paid to employees included in lines 14 through 17.~~

## ~~ANNUAL AMBULANCE FINANCIAL REPORT~~

### ~~EXPENSE CATEGORIES FOR USE ON PAGE 3~~

- ~~Line 09 – Bad Debt~~
- ~~Line 10 – Total Salaries, Wages, and Employee-Related Expenses~~
  - ~~– Salaries, Wages, Payroll Taxes, and Employee Benefits~~
- ~~Line 11 – Professional Services~~
  - ~~– Legal/Management Fees~~
  - ~~– Collection Fees~~
  - ~~– Accounting/Auditing~~
  - ~~– Data Processing Fees~~
- ~~Line 12 – Travel and Entertainment (Administrative)~~
  - ~~– Meals and Entertainment~~
  - ~~– Travel/Transportation~~
- ~~Line 13 – Other General and Administrative~~
  - ~~– Office Related (Supplies, Phone, Postage, Advertising)~~
  - ~~– Professional Liability Insurance~~
  - ~~– Dues, Subscriptions, Miscellaneous~~
- ~~Line 14 – Depreciation~~
- ~~Line 15 – Rent/Leasing~~
- ~~Line 16 – Building/Station~~
  - ~~– Utilities, Property Taxes/Insurance, Cleaning/Maintenance~~
- ~~Line 17 – Vehicle Expenses~~
  - ~~– License/Registration~~
  - ~~– Repairs/Maintenance~~
  - ~~– Insurance~~
- ~~Line 18 – Other Operating Expenses~~
  - ~~– Dispatch Contracts~~
  - ~~– Employee Education/Training, Uniforms, Travel/Meals~~
  - ~~– Maintenance Contracts~~
  - ~~– Minor Equipment, Non-Chargeable Ambulance Supplies~~
- ~~Line 19 – Cost of Medical Supplies Charged to Patients~~
- ~~Line 20 – Interest Expense~~
  - ~~– Interest on: Bank Loans/Lines of Credit~~
- ~~Line 21 – Subscription Service Sales Expenses~~
  - ~~– Sales Commissions, Printing~~

## INSTRUCTIONS (cont'd)

### **Page 3: SCHEDULE OF REVENUES AND EXPENSES**

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#### **Operating Revenues:**

- Line 01: Transfer appropriate total from Page 2 as indicated.  
Line 02: Enter settlement amounts from AHCCCS transports. (DO NOT include settlement amounts resulting from a transport made under a SUBSCRIPTION SERVICE CONTRACT)  
Line 03: Enter settlement amounts from Medicare transports. (DO NOT include settlement amounts resulting from a transport made under a SUBSCRIPTION SERVICE CONTRACT)  
Line 04: Enter total of ALL settlement amounts from Subscription Service Contract transports.  
Line 05: Enter total of ALL settlement amounts from Contractual transports only.  
Line 06: Enter total from any other settlement sources.  
Line 07: Enter sum of lines 02 through 06.  
Line 08: Total Operating Revenue (The amount from Line 01 minus Line 07).

#### **Operating Expenses:**

- Lines 09-21: Report as either actual or allocated from expenses shared with Fire or other departments.  
Line 22: Enter the total sum of lines 09 through 21.  
Line 23: Enter the difference of line 08 minus line 22.  
Line 24: Enter the gross amount of sales from Subscription Service Contracts.  
Line 25: Enter the amount of Other Operating Revenues.  
Ex: Federal, State or Local Grants, Interest Earned, Patient Finance Charges.  
Line 26: Enter the total of Local Supportive Funding.  
Line 27: List other non-operating revenues (Ex: Donations, sales of assets, fund raisers).  
Line 28: List other non-operating expenses (Ex: Civil fines or penalties, loss on sale of assets).  
Line 29: Net Income (Line 23 plus Lines 24 through 27, minus Line 28).

### **Page 4: BALANCE SHEET**

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Current audited financial statements may be submitted in lieu of this page.

### **Page 5: STATEMENT OF CASH FLOWS**

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Current audited financial statements may be submitted in lieu of this page.

Questions regarding this reporting form can be submitted to:

- Arizona Department of Health Services
- Bureau of Emergency Medical Services and Trauma System
- Certificate of Necessity and Rates Section

- 150 North 18<sup>th</sup> Avenue, Suite 540
- Phoenix, AZ 85007
- Telephone: (602) 364-3150
- Fax: (602) 364-3567

**ARTICLE 10. GROUND AMBULANCE VEHICLE REGISTRATION**

**R9-25-1001. Initial and Renewal Application for a Certificate of Registration (Authorized by A.R.S. §§ 36-2212, 36-2232, 36-2240)**

- A.** To be eligible to obtain a certificate of registration for a ground ambulance vehicle, an applicant shall:
1. Hold a current and valid certificate of necessity issued under Article 9 of this Chapter;
  2. Possess a copy of a current and valid motor vehicle registration for the ground ambulance vehicle, issued according to A.R.S. Title 28, Chapter 7, Article 2, or similar statutes in another state; and
  3. Comply with all applicable requirements of this Article; Articles 2, 9, and 11 of this Chapter; and A.R.S. Title 36, Chapter 21.1.

**A.B.** ~~A person applying~~ An applicant for an initial or renewal certificate of registration of a ground ambulance vehicle shall submit an application ~~form~~ packet to the Department that contains:

1. The following information in a Department-provided format:
  - ~~1-a.~~ The applicant's legal business or corporate name, including all other business names used by the applicant related to the use of a ground ambulance vehicle;
  - ~~2-b.~~ The applicant's mailing address; e-mail address; physical address of the business, if different from the mailing address; fax number, if any; and ~~business, facsimile, and emergency telephone numbers~~ telephone number;
  - ~~3-c.~~ The ~~identifying~~ following information ~~of~~ about the ground ambulance vehicle; including:
    - ~~a-i.~~ The ~~make of the ground ambulance vehicle~~ manufacturer's name;
    - ~~b-ii.~~ The ~~year the~~ ground ambulance vehicle ~~manufacture year~~ was manufactured;
    - ~~e-iii.~~ The ~~ground ambulance~~ vehicle identification number of the ground ambulance vehicle;
    - ~~d-iv.~~ The unit number of the ground ambulance vehicle, assigned by the applicant;
    - ~~e-v.~~ The ground ambulance vehicle's state license plate number; and
    - ~~f-vi.~~ The location at which the ground ambulance vehicle will be available for inspection;
  - ~~4-d.~~ The ~~If applicable, the~~ identification number of the certificate of necessity ~~to~~ under which the ground ambulance vehicle is registered;

- 5-e. The name, e-mail address, and telephone number of the ~~person~~ individual to contact to arrange for inspection, if the inspection is ~~pre-announced~~ preannounced;
  - f. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;
  - g. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
  - h. Attestation that the information provided in the application packet, including the information in the accompanying documents, is accurate and complete; and
  - 6-i. The signature of the applicant or applicant's designated representative and date signed;
- 2. A copy of documentation demonstrating compliance with subsection (A)(2); and
  - 3. Unless the applicant operates or intends to operate the ground ambulance vehicle only as a volunteer not-for-profit service, the following fees:
    - a. A \$50 registration fee, as required under A.R.S. § 36-2212(D); and
    - b. A \$200 annual regulatory fee, as required under A.R.S. § 36-2240(4).
- B.C.** ~~Under~~ Except as provided in A.R.S. § 36-2232(A)(11), the Department shall inspect each ground ambulance vehicle according to R9-25-1004(A) and (B) to determine compliance with the provisions of A.R.S. Title 36, Chapter 21.1 and this Article:
- 1. ~~before~~ Within 30 calendar days before an initial certificate of registration is issued by the Department; ~~and~~
  - 2. At least every 12 months thereafter, before issuing a renewal certificate of registration.
- C.** ~~Under A.R.S. § 36-2232(A)(11), the Department shall either inspect an ambulance or receive an inspection report that meets the requirements in this Article by a Department-approved inspection facility before a renewal certificate of registration is issued by the Department.~~
- D.** ~~An applicant shall submit the following fees:~~
- 1. ~~\$50 application filing fee for an initial certificate of registration;~~
  - 2. ~~\$200 annual regulatory fee for each ground ambulance vehicle issued a certificate of registration; and~~
  - 3. ~~\$50 application filing fee for the renewal of a certificate of registration.~~
- E.D.** ~~The Department shall review and approve or deny an each application under this Section according to 9 A.A.C. 25, as described in Article 12 of this Chapter.~~
- E.** If the Department approves the application and sends the applicant the written notice of approval, specified in R9-25-1201(C)(5), the Department shall issue the certificate of registration to the applicant:

1. For an applicant with a current and valid certificate of necessity issued under Article 9 of this Chapter, within five working days after the date on the written notice of approval; and
2. For an applicant that does not have a current and valid certificate of necessity issued under Article 9 of this Chapter, when the certificate of necessity is issued.

**F.** The Department may deny a certificate of registration for a ground ambulance vehicle if the applicant:

1. Fails to meet the eligibility requirements of subsection (A);
2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
3. Fails or has failed to comply with any provision in this Article or Article 2, 9, or 11 of this Chapter;
4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

**R9-25-1002. Term and Transferability of Certificates of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)**

**A.** The Department shall issue an initial certificate of registration:

1. With a term of one year from date of issuance of the initial certificate of registration; or
2. If requested by the applicant, with a term shorter than one year that allows for the Department to conduct annual inspections of all of the applicant's ground ambulance vehicles at one time.

**B.** The Department shall issue a renewal certificate of registration with a term of one year from the expiration date on the previous certificate of registration.

**C.** If a certificate holder submits an application for renewal as described in R9-25-1001 before the expiration date of the current certificate of registration, the current certificate of registration does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.

**D.** A certificate of registration is not transferable from one person to another.

**E.** If there is a change in the ownership of a ground ambulance vehicle or the person who can legally possess and operate the ground ambulance vehicle, the new owner or person who can legally possess and operate the ground ambulance vehicle shall apply for and obtain a new certificate of registration before operating the ground ambulance vehicle in this state.

**R9-25-1003. Minimum Equipment and Supplies for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))**

- A. ~~A ground ambulance vehicle used for either BLS or ALS level of service shall contain the following operational equipment and supplies:~~
1. ~~A portable and a fixed suction apparatus;~~
  2. ~~Wide-bore tubing, a rigid pharyngeal curved suction tip, and a flexible suction catheter in the following French sizes:~~
    - a. ~~Two in 6, 8, or 10; and~~
    - b. ~~Two in 12, 14, or 16;~~
  3. ~~One fixed oxygen cylinder or equivalent with a minimum capacity of 106 cubic feet, a minimum pressure of 500 p.s.i., and a variable flow regulator;~~
  4. ~~One portable oxygen cylinder with a minimum capacity of 13 cubic feet, a minimum pressure of 500 p.s.i., and a variable flow regulator;~~
  5. ~~Oxygen administration equipment including: tubing, two adult-size and two pediatric-size non-rebreather masks, and two adult-size and two pediatric-size nasal cannula;~~
  6. ~~One adult-size, one child-size, one infant-size, and one neonate-size hand-operated, disposable, self-expanding bag-valve with one of each size bag-valve mask;~~
  7. ~~Nasal airways in the following French sizes:~~
    - a. ~~One in 16, 18, 20, 22, or 24; and~~
    - b. ~~One in 26, 28, 30, 32, or 34;~~
  8. ~~Two adult-size, two child-size, and two infant-size oropharyngeal airways;~~
  9. ~~Two large-size, two medium-size, and two small-size cervical immobilization devices;~~
  10. ~~Two small-size, two medium-size, and two large size upper extremities splints;~~
  11. ~~Two small-size, two medium-size, and two large size lower extremities splints;~~
  12. ~~One child-size and one adult-size lower extremity traction splints;~~
  13. ~~Two full-length spine boards;~~
  14. ~~Supplies to secure a patient to a spine board;~~
  15. ~~One cervical-thoracic spinal immobilization device for extrication;~~
  16. ~~Two sterile burn sheets;~~
  17. ~~Two triangular bandages;~~
  18. ~~Three sterile multi-trauma dressings, 10" x 30" or larger;~~
  19. ~~Fifty non-sterile 4" x 4" gauze sponges;~~
  20. ~~Ten non-sterile soft roller bandages, 4" or larger;~~
  21. ~~Four sterile occlusive dressings, 3" x 8" or larger;~~
  22. ~~Two 2" or 3" adhesive tape rolls;~~
  23. ~~Containers for biohazardous medical waste that comply with requirements in 18 A.A.C. 13;~~

Article 14;

24. ~~A sterile obstetrical kit containing towels, 4" x 4" dressing, scissors, bulb suction, and clamps or tape for cord;~~
25. ~~One blood glucose testing kit;~~
26. ~~A meconium aspirator adapter;~~
27. ~~A length/weight-based pediatric reference guide to determine the appropriate size of medical equipment and drug dosing;~~
28. ~~A pulse oximeter with both pediatric and adult probes;~~
29. ~~One child-size, one adult-size, and one large adult-size sphygmomanometer;~~
30. ~~One stethoscope;~~
31. ~~One heavy duty scissors capable of cutting clothing, belts, or boots;~~
32. ~~Two blankets;~~
33. ~~One thermal absorbent blanket with head cover or blanket of other appropriate heat-reflective material;~~
34. ~~Two sheets;~~
35. ~~Body substance isolation equipment, including:~~
  - a. ~~Two pairs of non-sterile disposable gloves;~~
  - b. ~~Two gowns;~~
  - c. ~~Two masks that are at least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator, which may be of universal size;~~
  - d. ~~Two pairs of shoe coverings; and~~
  - e. ~~Two sets of protective eye wear;~~
36. ~~At least three pairs of non-latex gloves; and~~
37. ~~A wheeled, multi-level stretcher that is:~~
  - a. ~~Suitable for supporting a patient at each level;~~
  - b. ~~At least 69 inches long and 20 inches wide;~~
  - c. ~~Rated for use with a patient weighing up to or more than 350 pounds;~~
  - d. ~~Adjustable to allow a patient to recline and to elevate the patient's head and upper torso to an angle at least 70° from the horizontal plane;~~
  - e. ~~Equipped with a mattress that has a protective cover;~~
  - f. ~~Equipped with at least two attached straps to secure a patient during transport, and~~
  - g. ~~Equipped to secure the stretcher to the interior of the vehicle during transport using the fastener required under R9-25-1002(38).~~

**B.** In addition to the equipment and supplies in subsection (A), a ground ambulance vehicle equipped to

provide BLS shall contain at least:

1. ~~The minimum supply of agents required in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at [www.azdhs.gov/cms-regulatory-references](http://www.azdhs.gov/cms-regulatory-references), that an administrative medical director may authorize for an EMT;~~
2. ~~The capability of providing automated external defibrillation;~~
3. ~~Two 3 mL syringes; and~~
4. ~~Two 10-12 mL syringes.~~

C. ~~In addition to the equipment and supplies in subsection (A) (B), a ground ambulance vehicle equipped to provide ALS shall contain at least the minimum supply of agents required in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at [www.azdhs.gov/cms-regulatory-references](http://www.azdhs.gov/cms-regulatory-references), that an administrative medical director may authorize for the highest level of service to be provided by the ambulance's crew and at least the following:~~

1. ~~Four intravenous solution administration sets capable of delivering 10 drops per cc;~~
2. ~~Four intravenous solution administration sets capable of delivering 60 drops per cc;~~
3. ~~Intravenous catheters in:~~
  - a. ~~Three different sizes from 14 gauge to 20 gauge, and~~
  - b. ~~Either 22 or 24 gauge;~~
4. ~~One child-size and one adult-size intraosseous needle;~~
5. ~~Venous tourniquet;~~
6. ~~Two endotracheal tubes in each of the following sizes: 2.5 mm, 3.0 mm, 3.5 mm, 4.0 mm, 4.5 mm, 5.0 mm, 5.5 mm, 6.0 mm, 7.0 mm, 8.0 mm, and 9.0 mm;~~
7. ~~One pediatric-size and one adult-size stylette for endotracheal tubes;~~
8. ~~End tidal CO<sub>2</sub> monitoring/capnography equipment with capability for pediatric and adult patients;~~
9. ~~One laryngoscope with blades in sizes 0-4, straight or curved or both;~~
10. ~~One pediatric-size and one adult-size Magill forceps;~~
11. ~~One scalpel;~~
12. ~~One portable, battery-operated cardiac monitor-defibrillator with strip chart recorder and adult and pediatric EKG electrodes and defibrillation capabilities;~~
13. ~~Electrocardiogram leads;~~
14. ~~The following syringes:~~
  - a. ~~Two 1 mL tuberculin;~~
  - b. ~~Four 3 mL;~~

- e. ~~Four 5 mL;~~
  - d. ~~Four 10-12 mL;~~
  - e. ~~Two 20 mL; and~~
  - f. ~~Two 50-60 mL;~~
  - 15. ~~Three 5 micron filter needles; and~~
  - 16. ~~Assorted sizes of non-filter needles.~~
- D.** ~~A ground ambulance vehicle shall be equipped to provide, and capable of providing, voice communication between:~~
- 1. ~~The ambulance attendant and the dispatch center;~~
  - 2. ~~The ambulance attendant and the ground ambulance service's assigned medical direction authority, if any; and~~
  - 3. ~~The ambulance attendant in the patient compartment and the ground ambulance service's assigned medical direction authority, if any.~~

**R9-25-1003. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2238, and 36-2247)**

- A.** At least 30 days before the date of a change in a certificate holder's name, the certificate holder shall send the Department written notice of the name change.
- B.** Within 30 days after the date of receipt of a notice described in subsection (A), the Department shall issue an amended certificate of registration that incorporates the name change but retains the expiration date of the current certificate of registration.
- C.** No later than 10 days after a certificate holder ceases to operate a ground ambulance vehicle, the certificate holder shall send the Department written notice of the date that the certificate holder ceased to operate the ground ambulance vehicle and of the certificate holder's intention to relinquish the certificate of registration for the ground ambulance vehicle as of that date.
- D.** Within 30 days after the date of receipt of a notice described in subsection (C), the Department:
  - 1. Shall:
    - a. Void the certificate of registration for the ground ambulance vehicle; and
    - b. Send the certificate holder written confirmation of the voluntary relinquishment of the certificate of registration, with an effective date that corresponds to the written notice; and
  - 2. If the ground ambulance vehicle is the only ground ambulance vehicle operated by a ground ambulance service, may revoke the certificate of necessity of the ground ambulance service.
- E.** A certificate holder shall notify the Department in writing within one working day after a change in the certificate holder's eligibility to hold a certificate of registration for a ground ambulance vehicle

under R9-25-1001(A)(2) or (3).

**F.** Upon receiving a notification required in subsection (E), the Department:

1. Shall revoke the certificate for the ground ambulance vehicle; and
2. If the ground ambulance vehicle is the only ground ambulance vehicle operated by a ground ambulance service, may revoke the certificate of necessity of the ground ambulance service.

**~~R9-25-1004. Minimum Staffing Requirements for Ground Ambulance Vehicles (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5))~~**

~~When transporting a patient, a ground ambulance service shall staff a ground ambulance vehicle according to A.R.S. § 36-2202(J):~~

**R9-25-1004. Ground Ambulance Vehicle Inspections (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2232(A)(11), and 36-2241)**

**A.** Except as provided in R9-25-910(B) and subsection (B)(2), an applicant or a certificate holder shall:

1. Make a ground ambulance vehicle, equipment, and supplies available for inspection within Arizona within 10 working days after a request by the Department; and
2. Upon the Department's request, provide the opportunity to ride in or operate the ground ambulance vehicle being inspected.

**B.** The Department:

1. Shall inspect:
  - a. Each ground ambulance vehicle according to R9-25-1005 and Table 10.1,
  - b. Supplies and equipment according to Table 10.2, and
  - c. For the level of service the ground ambulance vehicle is expected to be used to provide;
2. May inspect, without prior notification, a ground ambulance vehicle or supplies and equipment, for the level of service a ground ambulance vehicle is being used to provide at the time of inspection; and
3. Shall conduct each inspection in compliance with A.R.S. § 41-1009.

**C.** As permitted under A.R.S. § 36-2232(A)(11), upon a certificate holder's request and at the certificate holder's expense, the annual inspection of a ground ambulance vehicle required for renewal of a certificate of registration may be conducted by a Department-approved inspection facility according to Table 10.1.

**D.** A certificate holder may request the Department to inspect all of the certificate holder's ground ambulance vehicles at the same date and location.

**E.** If, after inspection of a certificate holder's ground ambulance vehicle according to Table 10.1, the Department determines that the ground ambulance vehicle has:

1. A major defect, the certificate holder shall take the ground ambulance vehicle out-of-service until the major defect is corrected; or
  2. A minor defect, the certificate holder:
    - a. May allow the ground ambulance vehicle to be operated to transport patients for up to 15 calendar days while the minor defect is corrected; and
    - b. After 15 calendar days, shall take the ground ambulance vehicle out-of-service until the minor defect is corrected, unless granted an extension of time, according to subsection (F), to repair the minor defect.
- F.** The Department may grant an extension of time for a certificate holder to repair a minor defect upon a written request from the certificate holder, detailing the reasons for the need of an extension of time.
- G.** Within 15 calendar days after the date of repair of a major defect or minor defect, a certificate holder shall submit written notice and documentation of the repair to the Department.

**R9-25-1005. ~~Ground Ambulance Vehicle Inspection; Major and Minor Defects (A.R.S. §§ 36-2202(A)(5), 36-2212, 36-2232, 36-2234)~~**

- A.** ~~A certificate holder shall make the ground ambulance vehicle, equipment, and supplies available for inspection at the request of the Director or the Director's authorized representative.~~
- B.** ~~If inspected by the Department, a certificate holder shall allow the Director or the Director's authorized representative to ride in or operate the ground ambulance vehicle being inspected.~~
- C.** ~~A certificate holder may request the Department to inspect all of the certificate holder's ground ambulance vehicles at the same date and location.~~
- D.** ~~A Department-approved inspection facility may inspect a ground ambulance vehicle under A.R.S. § 36-2232(A)(11).~~
- E.** ~~The Department classifies defects on a ground ambulance vehicle as major or minor as follows:~~

<b>INSPECTION ITEM</b>	<b>MAJOR DEFECT</b>	<b>MINOR DEFECT</b>
<b>LAMPS:</b>		
Emergency warning lights	Lack of 360° of conspicuity	Cracked, broken, or missing lens Inoperative lamps
Back-up lamps		Inoperative Cracked, broken, or missing lens
Brake lamps	Both inoperative	† inoperative

Hazard lamps		Inoperative
Head lamps	Inoperative	High beam inoperative Low beam inoperative Inoperative dimmer switch
Loading lamps		Inoperative Cracked, broken, or missing lens
Parking lamps		Inoperative
Patient Compartment interior lamps	All lamps inoperative	Inoperative individual lamps Missing lens
Side marker lamps		Inoperative Cracked, broken, or missing lens
Spot lamp in driver's compartment		Inoperative
Tail lamps	Both inoperative	† inoperative Cracked, broken, or missing lens
Turn signal lamps		Any turn signal lamp inoperative Cracked, broken, or missing lens
<b>MECHANICAL, STRUCTURAL, ELECTRICAL:</b>		
Bumpers		Loose or missing bumper
Defroster		Inoperative Ventilation system openings partially blocked
Electrical system	Does not comply with R9-25-1002(6)	
Engine compartment		Inoperative hood latch Deterioration of hoses, belts, or wiring Deterioration of battery hold-down clamps Corrosive acid buildup on battery terminals Incapable of generating voltage in

		compliance with R9-25-1002(4)(b)
Engine compartment wiring system		Does not comply with R9-25-1002(5)
Engine cooling system	Does not comply with R9-25-1002(3)	Leaks in system
Engine intake air cleaner		Does not comply with R9-25-1002(1)
Exhaust	Exhaust fumes in the patient or driver compartment	Exhaust pipe brackets not securely attached to the chassis and tailpipe End of tailpipe pinched or bent
Frame	Cracks in frame	
Fuel system	Fuel tank not mounted according to manufacturer's specifications Fuel tank brackets cracked or broken Leaking fuel tanks or fuel lines Fuel caps missing or of a type not specified by the manufacturer	
Ground ambulance vehicle body	Damage or rust to the exterior of the ground ambulance vehicle, which interferes with the operation of the ground ambulance vehicle Damage resulting in a hole in the driver's compartment or the patient compartment Holes that may allow exhaust or dust to enter the patient compartment Bolts attaching body to chassis loose, broken, or missing	Damage resulting in cuts or rips to the exterior of the ground ambulance vehicle
Heating and air conditioning systems		Unsecured hoses Does not maintain minimum temperature required in R9-25-1002(23) and 1002(17)

Horn		Inoperative
Parking brake		Inoperative
Siren	Inoperative	
Steering	Steering wheel bracing cracked Inoperative	Power steering belts slipping Power steering belts cracked or frayed Fluid leaks Fluid does not fill the reservoir between the full level and the add level indicator on the dipstick
Suspension	Broken suspension parts U-bolts loose or missing	Bent suspension parts Leaking shock absorbers Cracks or breaks in shock absorber mounting brackets
Vehicle brakes	Inoperative	Fluid leaks
<b>INTERIOR:</b>		
Communication equipment	Lack of operative communication equipment	Inoperative communication equipment in the patient compartment
Edges		Presence of exposed sharp edges
Equipment	Inability to secure oxygen tanks	Inability to secure other equipment
Fire extinguisher	Absent	Not at full charge Expired inspection tag
Hangers		Supports or hangers protruding more than 2" when not in use
Instrument panel		Inoperative gauges, switches, or illumination
Padding		Missing padding over exits in the patient compartment
Patient compartment	Visible blood, body fluids, or tissue	Unrepaired cuts or holes in seats

		Missing pieces of floor covering
Seat belts and securing belts	Absence of seat belt or inoperative seat belt in the driver's compartment More than one inoperative seat belt in the patient compartment Absence of securing belts on a stretcher	Frayed seat belt or securing belt material One inoperative seat belt in the patient compartment
Stretcher fastener	Does not comply with R9-25-1002(36)	
<b>EXTERIOR:</b>		
Patient compartment doors	Completely or partially missing window panel	Inoperative open door securing devices Cracked window panels
Marking		Missing company identification Incorrect size or location
Mirrors	Exterior rear vision or wide vision mirrors missing	Cracked mirror glass Loose mounting bracket bolts or screws Broken mirrors Loose or broken mounting brackets Missing mounting bracket bolts or screws
Tires	Tires on each axle are not of equal size, equal ply ratings, and equal type Bumps, knots, or bulges on any tire Exposed ply or belting on any tire Flat tire on any wheel	Tread groove depth less than 4/32" measured in a tread groove on any tire
Wheels	Loose or missing lug nuts Broken lugs Cracked or bent rims	
Windows		Placement of nontransparent materials which obstruct view Cracked or broken

Windshield	Windshield that is obstructed Placement of nontransparent materials which obstruct view	Unrepaired starred cracks or line cracks extending more than 1 inch from the bottom or side of the windshield Unrepaired starred cracks or line cracks extending more than 2 inches from the top of the windshield
Windshield washer system		Does not comply with R9-25-1002(39)
Windshield wipers	Inoperative wiper on driver's side	Inoperative speed control Split or cracked wiper blade Inoperative wiper on passenger's side

- F.** If the Department determines that there is a major defect on the ground ambulance vehicle after inspection, the certificate holder shall take the ground ambulance vehicle out of service until the defect is corrected.
- G.** If the Department finds a minor defect on the ground ambulance vehicle after inspection, the ground ambulance vehicle may be operated to transport patients for up to 15 days until the minor defect is corrected.
1. The Department may grant an extension of time to repair the minor defect upon a written request from the certificate holder detailing the reasons for the need of an extension of time.
  2. If the minor defect is not repaired within the time prescribed by the Department, and an extension has not been granted, the certificate holder shall take the ground ambulance vehicle out of service until the minor defect is corrected.
- H.** Within 15 days of the date of repair of the major or minor defect, the certificate holder shall submit written notice of the repair to the Department.

**~~R9-25-1002~~R9-25-1005. Minimum Standards for Ground Ambulance Vehicles (Authorized by A.R.S. § §§ 36-2202(A)(5), 36-2232(C)(5))**

- A.** An applicant for a certificate of registration or a certificate holder shall ensure that a ground ambulance vehicle is marked on the sides of the ground ambulance vehicle with the legal business or corporate name of the applicant or certificate holder, with letters not less than six inches in height.

- B.** An applicant for a certificate of registration or a certificate holder shall ensure a ground ambulance vehicle is equipped with the following:
1. An engine intake air cleaner that meets the ground ambulance vehicle manufacturer's engine specifications;
  2. A brake system that meets the requirements in A.R.S. § 28-952;
  3. A cooling system in the engine compartment that maintains the engine temperature operating range required to prevent damage to the ground ambulance vehicle engine;
  4. A battery:
    - a. With no leaks, corrosion, or other visible defects; and
    - b. As measured by a voltage meter, capable of generating:
      - i. 12.6 volts at rest, and
      - ii. 13.2 to 14.2 volts on high idle with all electrical equipment turned on;
  5. A wiring system in the engine compartment designed to prevent the wire from being cut by or tangled in the engine or hood;
  6. Hoses, belts, and wiring with no visible defects;
  7. An electrical system capable of maintaining a positive amperage charge while the ground ambulance vehicle is stationary and operating at high idle with headlights, running lights, patient compartment lights, environmental systems, and all warning devices turned on;
  8. An exhaust pipe, muffler, and tailpipe that meet the requirements in A.R.S. § 28-955 under the ground ambulance vehicle and securely attached to the chassis;
  9. A frame capable of supporting the:
    - a. ~~gross~~ Gross vehicle weight of the ground ambulance vehicle; and
    - b. The anticipated weight of ambulance attendants, supplies and equipment, and patients;
  10. A horn that meets the requirements in A.R.S. § 28-954(A);
  11. A siren that meets the requirements in A.R.S. § 28-954(E);
  12. A front bumper that is positioned at the forward-most part of the ground ambulance vehicle extending to the ground ambulance vehicle's outer edges;
  13. A fuel cap of a type specified by the manufacturer for each fuel tank;
  14. A steering system to include:
    - a. For a hydraulic power steering system:
      - i. Power-steering belts free from frays, cracks, or slippage;
      - b-ii. Power-steering system that is free from leaks; and
      - e-iii. Fluid in the power-steering system that fills the reservoir between the full

- level and the add level indicator on the dipstick;
- b. For an electrical or other type of steering system that does not contain the components of a hydraulic power steering system, components that:
  - i. Provide the same functions as a hydraulic power steering system, and
  - ii. Meet manufacturer's specifications; and
- ~~d.c.~~ Bracing extending from the center of the steering wheel to the steering wheel ring that is not cracked;
- 15. Front and rear shock absorbers that are free from leaks;
- 16. Tires on each axle that:
  - a. Are properly inflated;
  - b. Are of equal size, equal ply ratings, and equal type;
  - c. Are free of bumps, knots, or bulges;
  - d. Have no exposed ply or belting; and
  - e. Have tread groove depth equal to or more than 4/32 inch;
- 17. An air cooling system capable of achieving and maintaining a 20° F difference between the air intake and the cool air outlet;
- 18. Air cooling and heater hoses secured in all areas of the ground ambulance vehicle and chassis to prevent wear due to vibration;
- 19. Body free of damage or rust that interferes with the physical operation of the ground ambulance vehicle or creates a hole in the driver's compartment or the patient compartment;
- 20. Windshield defrosting and defogging equipment;
- 21. Emergency warning lights that provide 360° conspicuity;
- 22. At least one 5-lb. ABC dry, chemical, multi-purpose fire extinguisher in a quick release bracket, either disposable with an indicator of a full charge or with a current inspection tag;
- 23. A heating system capable of achieving and maintaining a temperature of not less than 68° F in the patient compartment within 30 minutes;
- 24. Sides of the ground ambulance vehicle insulated and sealed to prevent dust, dirt, water, carbon monoxide, and gas fumes from entering the interior of the patient compartment and to reduce noise;
- 25. Interior patient compartment wall and floor coverings that are:
  - a. In good repair and capable of being disinfected, and
  - b. Maintained in a sanitary manner;
- 26. Padding over exit areas from the patient compartment and over sharp edges in the patient compartment;

27. Secured interior equipment and other objects;
28. When present, hangers or supports for equipment mounted not to protrude more than 2 inches when not ~~in use~~ being used;
29. Functional lamps and signals, including:
  - a. Bright and dim headlamps,
  - b. Brake lamps,
  - c. Parking lamps,
  - d. Backup lamps,
  - e. Tail lamps,
  - f. Turn signal lamps,
  - g. Side marker lamps,
  - h. Hazard lamps,
  - i. Patient loading door lamps and side spot lamps,
  - j. Spot lamp in the driver's compartment and within reach of the ambulance attendant, and
  - k. Patient compartment interior lamps;
30. Side-mounted rear vision mirrors and wide vision mirror mounted on, or attached to, the side-mounted rear vision mirrors or other optical devices allowing monitoring of the area surrounding the ground ambulance vehicle;
31. A patient loading door that permits the safe loading and unloading of a patient occupying a stretcher in a supine position;
32. At least two means of egress from the patient compartment to the outside through a ~~window~~ or door;
33. Functional open door securing devices on a patient loading door;
34. Patient compartment upholstery free of cuts or tears and capable of being disinfected;
35. A ~~seat belt~~ three-point occupant restraint system installed for each seat in the driver's compartment;
- ~~36. Belts or devices installed on a stretcher to be used to secure a patient;~~
- ~~37-36.~~ A seat belt restraint system with at least three-points of contact with the occupant of a seat, installed for each seat in the patient compartment;
- ~~37.~~ A wheeled, multi-level stretcher that is:
  - a. Suitable for supporting a patient at each level;
  - b. At least 69 inches long and 20 inches wide;
  - c. Rated for use with a patient weighing either:

- i. Up to 350 pounds, or
  - ii. For a ground ambulance vehicle capable of transporting a patient weighing over 350 pounds, up to the rated capability of the ground ambulance vehicle;
  - d. Adjustable to allow a patient to recline and to elevate the patient's head and upper torso to an angle at least 70° from the horizontal plane;
  - e. Equipped with a mattress that has a protective cover that is free of cracks, cuts, or tears and capable of being disinfected;
  - f. Equipped with a five-point restraint system to secure a patient during transport; and
  - g. Equipped to secure the stretcher to the interior of the vehicle during transport using the fastener required under subsection (B)(38);
38. A crash stable side or center mounting fastener of the quick release type to secure a stretcher to a ground ambulance vehicle;
39. Windshield and windows free of obstruction;
40. A windshield free from unrepaired starred cracks and line cracks that extend more than 1 inch from the bottom ~~and~~ or sides of the windshield or that extend more than 2 inches from the top of the windshield;
41. A windshield-washer system that applies enough cleaning solution to clear the windshield;
42. Operable windshield wipers with a minimum of two speeds;
43. Functional hood latch for the engine compartment;
44. Fuel system with fuel tanks and lines that meets manufacturer's specifications;
45. Suspension system that meets the ground ambulance vehicle manufacturer's specifications;
46. Instrument panel that meets the ground ambulance vehicle manufacturer's specifications;
- and
47. Wheels that meet and are mounted according to manufacturer's specifications.

**C.** An applicant for a certificate of registration or a certificate holder shall ensure that a ground ambulance vehicle is equipped:

- 1. To provide, and capable of providing, voice communication between:
  - a. An ambulance attendant and the dispatch center; and
  - b. An ambulance attendant and a source from which the ambulance attendant may request and receive on-line medical direction, according to R9-25-201(E)(2)(a)(i);

and
- 2. Except as provided in subsection (E), with a global positioning monitoring device to enable the recording of times of arrival on-scene for determining response times.

**D.** An applicant for a certificate of registration or a certificate holder shall ensure that a ground ambulance vehicle is equipped, as specified in Table 10.2, to provide the level of service for which the ground ambulance vehicle is to be used.

**E.** An applicant for a certificate of registration or a certificate holder may request a waiver of the requirement in subsection (C)(2) by submitting to the Department, on an annual basis and in a Department-provided format, the following information:

1. The applicant's or certificate holder's name;
2. If applicable, the identification number of the certificate of necessity under which the ground ambulance vehicle is registered;
3. The identifying information specified in R9-25-1001(B)(1)(c) for the ground ambulance vehicle to which the waiver would pertain;
4. A reason and justification for the waiver;
5. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant or certificate holder according to R9-25-102;
6. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
7. Attestation that the information provided is accurate and complete; and
8. The signature of the specified according to subsection (E)(5) and date signed.

**R9-25-1006. ~~Ground Ambulance Vehicle Identification (A.R.S. §§ 36-2212, 36-2232) Repealed~~**

**A.** ~~A ground ambulance vehicle shall be marked on its sides with the certificate of registration applicant's legal business or corporate name with letters not less than 6 inches in height.~~

**B.** ~~A ground ambulance vehicle marked with a level of ground ambulance service shall be equipped and staffed to provide the level of ground ambulance service identified while in service.~~

**Table 10.1. Major and Minor Defects (Authorized by A.R.S. §§ 36-2202(A)(5), 36-2212, 36-2232, 36-2234)**

The Department classifies defects on a ground ambulance vehicle as major or minor as follows:

<u>INSPECTION ITEM</u>	<u>MAJOR DEFECT</u>	<u>MINOR DEFECT</u>
<u>EXTERIOR:</u>		
<u>Emergency warning lights</u>	<u>Lack of 360° of conspicuity</u>	<u>Cracked, broken, or missing lens</u> <u>Inoperative lamps</u>
<u>Ground ambulance vehicle body</u>	<u>Damage or rust to the exterior of the ground ambulance vehicle, which interferes with the operation of the ground ambulance vehicle</u> <u>Damage resulting in a hole in the driver’s compartment or the patient compartment</u> <u>Holes that may allow exhaust or dust to enter the patient compartment</u> <u>Bolts attaching body to chassis loose, broken, or missing</u>	<u>Damage resulting in cuts or rips to the exterior of the ground ambulance vehicle</u>
<u>Marking</u>		<u>Missing company identification</u> <u>Incorrect size or location</u>
<u>Mirrors or other optical devices allowing monitoring of the area surrounding the ground ambulance vehicle</u>	<u>Exterior rear vision or wide vision mirrors missing</u> <u>or</u> <u>An optical device not functioning according to manufacturer’s specifications</u>	<u>Cracked mirror glass</u> <u>Loose mounting bracket bolts or screws</u> <u>Broken mirrors</u> <u>Loose or broken mounting brackets</u> <u>Missing mounting bracket bolts or screws</u>
<u>Windshield</u>		<u>Unrepaired starred cracks or line cracks extending more than 1 inch from the bottom or side of the windshield</u> <u>Unrepaired starred cracks or line cracks extending more than 2 inches from the top of the windshield</u>
<u>Windows</u>		<u>Placement of nontransparent materials which obstruct view</u> <u>Cracked or broken</u>
<u>Fuel caps</u>	<u>Fuel caps missing or of a type not specified by the manufacturer</u>	
<u>Bumpers</u>		<u>Loose or missing bumper</u>
<u>Patient compartment doors</u>	<u>Completely or partially missing window panel</u> <u>Two means of egress missing or inoperative</u>	<u>Inoperative open door securing devices</u> <u>Cracked window panels</u>

<u>Padding over exit areas</u>		<u>Missing padding over exits in the patient compartment</u> <u>Deterioration of padding</u>
<u>Fire extinguisher</u>	<u>Absent or non-functional</u>	<u>Not at full charge</u> <u>Expired inspection tag</u>
<u>Exhaust system</u>	<u>Exhaust fumes in the patient or driver compartment</u>	<u>Muffler not securely attached to the chassis and tailpipe</u> <u>Exhaust pipe brackets not securely attached to the chassis and tailpipe</u> <u>End of tailpipe pinched or bent</u>
<u>Wheels</u>	<u>Loose or missing lug nuts</u> <u>Broken lugs</u> <u>Cracked or bent rims</u>	
<u>Tires</u>	<u>Tires on each axle are not of equal size, equal ply ratings, and equal type</u> <u>Bumps, knots, or bulges on any tire</u> <u>Exposed ply or belting on any tire</u> <u>Flat tire on any wheel</u>	<u>Tread groove depth less than 4/32” measured in a tread groove on any tire</u> <u>Not properly inflated</u>
<u>EXTERIOR LIGHTING:</u>		
<u>Head lamps</u>	<u>Inoperative</u>	<u>High beam inoperative</u> <u>Low beam inoperative</u> <u>Inoperative dimmer switch</u>
<u>Brake lamps</u>	<u>Both inoperative</u>	<u>One inoperative</u>
<u>Parking lamps</u>		<u>Inoperative</u>
<u>Back-up lamps</u>		<u>Inoperative</u> <u>Cracked, broken, or missing lens</u>
<u>Tail lamps</u>	<u>Both inoperative</u>	<u>One inoperative</u> <u>Cracked, broken, or missing lens</u>
<u>Turn signal lamps</u>		<u>Any turn signal lamp inoperative</u> <u>Cracked, broken, or missing lens</u>
<u>Side marker lamps</u>		<u>Inoperative</u> <u>Cracked, broken, or missing lens</u>
<u>Hazard lamps</u>		<u>Inoperative</u>
<u>Loading lamps</u>		<u>Inoperative</u> <u>Cracked, broken, or missing lens</u>

<u>ENGINE COMPARTMENT AND BATTERY:</u>		
<u>Engine compartment</u>		<u>Inoperative hood latch</u> <u>Deterioration of hoses, belts, or wiring</u> <u>Air cooling and heater hoses not secured</u> <u>Fluid leaks other than engine cooling system</u>
<u>Battery</u>	<u>Not secured</u> <u>For a vehicle powered by an electric motor, not meeting manufacturer's guidelines for use</u>	<u>Deterioration of battery hold-down clamps</u> <u>Corrosive acid buildup on battery terminals</u> <u>Incapable of generating voltage in compliance with R9-25-1005(B)(4)(b)</u>
<u>Electrical system</u>	<u>Does not comply with R9-25-1005(B)(7)</u>	
<u>Engine compartment wiring system</u>		<u>Does not comply with R9-25-1005(B)(5)</u>
<u>Engine cooling system</u>	<u>Does not comply with R9-25-1005(B)(3)</u>	<u>Leaks in system</u> <u>Inadequate fluid in reservoir</u>
<u>Engine intake air cleaner</u>		<u>Does not comply with R9-25-1005(B)(1)</u>
<u>DRIVER'S COMPARTMENT:</u>		
<u>Air cooling system</u>	<u>Does not maintain temperature required according to R9-25-1005(B)(17)</u>	<u>Unsecured hoses</u>
<u>Instrument panel</u>		<u>Inoperative gauges, switches, or illumination</u>
<u>Global positioning monitoring device</u>		<u>Except if under a waiver granted under R9-25-1005(E), lack of operative equipment</u>
<u>Horn</u>		<u>Inoperative</u>
<u>Siren</u>	<u>Inoperative</u>	
<u>Steering wheel bracing</u>	<u>Steering wheel bracing cracked</u>	
<u>Windshield-washer system</u>		<u>Does not comply with R9-25-1005(B)(41)</u>
<u>Windshield defroster/defogger</u>		<u>Inoperative</u> <u>Ventilation system openings partially blocked</u>
<u>Windshield wipers</u>	<u>Inoperative wiper on driver's side</u>	<u>Inoperative speed control</u> <u>Split or cracked wiper blade</u>

		<u>Inoperative wiper on passenger's side</u>
<u>Windshield</u>	<u>Windshield that is obstructed</u> <u>Placement of nontransparent materials that obstruct view</u>	
<u>Equipment</u>		<u>Inability to secure equipment</u>
<u>Occupant restraint system</u>	<u>Absence of an occupant restraint system or inoperative occupant restraint system in the driver's compartment</u>	<u>Frayed material on the occupant restraint system</u>
<u>Spot lamp in driver's compartment</u>		<u>Inoperative</u>
<u>Exhaust system</u>	<u>Exhaust fumes in the driver's compartment</u>	
<u>PATIENT COMPARTMENT:</u>		
<u>Air cooling system</u>	<u>Does not maintain temperature required according to R9-25-1005(B)(17)</u>	<u>Unsecured hoses</u>
<u>Heating system</u>		<u>Unsecured hoses</u> <u>Does not maintain minimum temperature required in R9-25-1005(B)(23)</u>
<u>Equipment</u>	<u>Inability to secure oxygen tanks</u> <u>Inability of fixed oxygen tank to hold pressure</u>	<u>Inability to secure other equipment</u> <u>Inability of portable oxygen tank to hold pressure</u>
<u>Interior wall and floor coverings and seat upholstery</u>	<u>Visible blood, body fluids, or tissue</u>	<u>Unrepaired cuts or holes in seats</u> <u>Missing pieces of floor covering</u> <u>Upholstery, floor, walls, or ceiling not capable of being disinfected</u>
<u>Occupant restraint systems and securing belts</u>	<u>More than one inoperative occupant restraint system in the patient compartment</u> <u>Absence of securing belts on a stretcher</u>	<u>Frayed material on the occupant restraint system or securing belt</u> <u>One inoperative occupant restraint system in the patient compartment</u>
<u>Stretcher fastener</u>	<u>Does not comply with R9-25-1005(B)(38)</u>	
<u>Hangers</u>		<u>Supports or hangers protruding more than 2" when not being used</u>
<u>Edges</u>		<u>Presence of exposed sharp edges</u>
<u>Patient Compartment interior lamps</u>	<u>All lamps inoperative</u>	<u>Inoperative individual lamps</u> <u>Missing lens</u>
<u>Stretcher</u>	<u>Does not comply with R9-25-1005(B)(37)</u>	

<u>Exhaust system</u>	<u>Exhaust fumes in the patient compartment</u>	
<u>COMMUNICATION EQUIPMENT:</u>		
<u>Communication capability between an ambulance attendant and the dispatch center</u>	<u>Lack of operative communication equipment</u>	
<u>Communication capability between an ambulance attendant and the physician proving on-line medical direction</u>	<u>Lack of operative communication equipment</u>	
<u>GENERAL SYSTEMS:</u>		
<u>Frame</u>	<u>Cracks in frame</u>	
<u>Suspension</u>	<u>Broken suspension parts</u> <u>U-bolts loose or missing</u>	<u>Bent suspension parts</u> <u>Leaking shock absorbers</u> <u>Cracks or breaks in shock absorber mounting brackets</u>
<u>Side insulation</u>	<u>Missing or settled insulation</u>	<u>Inadequate insulation</u>
<u>Parking brake</u>		<u>Inoperative</u>
<u>Vehicle brakes</u>	<u>Inoperative</u>	<u>Fluid leaks</u>
<u>Steering system</u>	<u>Inoperative</u>	<u>Power steering belts slipping</u> <u>Power steering belts cracked or frayed</u> <u>Fluid leaks</u> <u>Fluid does not fill the reservoir between the full level and the add level indicator on the dipstick</u>

**Table 10.2. Minimum Equipment and Supplies for Ground Ambulance Vehicles (Authorized by A.R.S. § 36-2202(A)(5))**

An applicant for a certificate of registration or a certificate holder shall ensure that a ground ambulance vehicle contains, at a minimum, the following operational equipment and supplies based on the level of service of use:

<b>MINIMUM EQUIPMENT AND SUPPLIES</b>	<b>BLS</b>	<b>ALS</b>
<b>A. Ventilation and Airway Equipment</b>		
1. <u>Portable and fixed suction apparatus</u>	<u>X</u>	<u>X</u>
2. <u>Wide-bore tubing, rigid pharyngeal curved suction tip and flexible suction catheters in the following French sizes:</u> a. <u>Two in 6, 8, or 10; and</u> b. <u>Two in 12, 14, or 16</u>	<u>X</u>	<u>X</u>
3. <u>One fixed oxygen cylinder or equivalent with a minimum capacity of 106 cubic feet, a minimum pressure of 500 p.s.i., and a variable flow regulator</u>	<u>X</u>	<u>X</u>
4. <u>One portable oxygen cylinder with a minimum capacity of 13 cubic feet, a minimum pressure of 500 p.s.i., and a variable flow regulator</u>	<u>X</u>	<u>X</u>
5. <u>Oxygen administration equipment, including tubing; non-rebreathing masks (adult, pediatric, and infant sizes); and nasal cannulas (adult, Pediatric, and infant sizes)</u>	<u>X</u>	<u>X</u>
6. <u>Bag-valve mask, with hand-operated, self-reexpanding bag (adult size), with oxygen reservoir/accumulator; mask (adult, pediatric, infant, and neonate sizes); and valve</u>	<u>X</u>	<u>X</u>
7. <u>Airways, nasal (adult, pediatric, and infant sizes), one each in French sizes 16 to 34</u>	<u>X</u>	<u>X</u>
8. <u>Airways, oropharyngeal, two each in adult, pediatric, and infant sizes</u>	<u>X</u>	<u>X</u>
9. <u>Laryngoscope handle, adult and pediatric, with, if applicable, extra batteries and bulbs</u>	=	<u>X</u>
10. <u>Laryngoscope blades, one each in sizes 0, 1, and 2, straight; sizes 3 and 4, straight and curved</u>	=	<u>X</u>
11. <u>Endotracheal tubes, sizes 2.5-5.5 mm cuffed or uncuffed and 6.0-9.0 mm cuffed</u>	=	<u>X</u>
12. <u>Endotracheal tube cuff pressure manometer</u>	=	<u>X</u>
13. <u>Stylettes for Endotracheal tubes, one each in adult and pediatric sizes</u>	=	<u>X</u>
14. <u>One type of supraglottic airway device</u>	=	<u>X</u>
15. <u>Two 10 mL straight-tip syringes</u>	=	<u>X</u>

16. <u>Two long, large-bore needles for needle chest decompression, 2” to 3.25” long and 14-16G</u>	=	X
17. <u>Hand-held nebulizer(s)</u>	=	X
18. <u>Aerosol masks, one each adult and pediatric</u>	=	X
19. <u>Magill forceps, adult and pediatric</u>	=	X
20. <u>Nasogastric tubes, sizes 5F and 8F, Salem sump sizes 14F and 18F</u>	=	X
21. <u>End-tidal CO<sub>2</sub> detectors, quantitative, with capability for adult and pediatric patients</u>	=	X
22. <u>Non-Invasive Positive Pressure Ventilation (NIPPV) device with one mask in each available size</u>	=	X
23. <u>In-line viral/bacterial filter</u>	=	X
<b>B. Monitoring and Defibrillation</b>		
1. <u>Automatic external defibrillator</u>	X	=
2. <u>One portable, battery-operated monitor/defibrillator, with tape write-out/recorder, defibrillator pads, adult and pediatric paddles or hands-free patches, ECG leads, and adult and pediatric chest attachment electrodes</u>	=	X
3. <u>Transcutaneous cardiac pacemaker, either stand-alone unit or integrated into monitor/defibrillator, including pediatric pads and cables</u>	=	X
<b>C. Stretchers and Immobilization Devices</b>		
1. <u>One stair chair or another mechanism for safely moving a patient in an upright sitting position</u>	X	X
2. <u>Cervical immobilization devices, rigid, adjustable or two each in small, medium, and large sizes</u>	X	X
3. <u>Head immobilization device, either firm padding or another commercial device</u>	X	X
4. <u>Lower extremity (femur) traction device, including lower extremity, limb support slings, padded ankle hitch, padded pelvic support, and traction strap (one adult-sized and one child-sized)</u>	X	X
5. <u>Two upper and two lower extremity immobilization splints in each of small, medium and large sizes</u>	X	X
6. <u>Two full-length spine boards</u>	X	X
7. <u>Supplies to secure a patient to a spine board, including at least three appropriate restraint straps (not using a single chin strap for head immobilization)</u>	X	X
8. <u>One cervical-thoracic spinal immobilization device for extrication</u>	X	X
<b>D. Bandages</b>		

1. <u>Burn pack, including standard package, two sterile burn sheets</u>	<u>X</u>	<u>X</u>
2. <u>Dressings, including sterile multi-trauma dressings (various large and small sizes, including three sized 10" x 12" or larger)</u>	<u>X</u>	<u>X</u>
3. <u>Two abdominal pads, 10" x 12" or larger</u>	<u>X</u>	<u>X</u>
4. <u>Fifty non-sterile 4" x 4" gauze sponges</u>	<u>X</u>	<u>X</u>
5. <u>Two triangular bandages</u>	<u>X</u>	<u>X</u>
6. <u>Four gauze rolls, sterile (4" or larger)</u>	<u>X</u>	<u>X</u>
7. <u>Ten soft roller bandages, non-sterile (4" or larger)</u>	<u>X</u>	<u>X</u>
8. <u>Four occlusive dressing, sterile, 3" x 8" or larger</u>	<u>X</u>	<u>X</u>
9. <u>Adhesive or self-adhesive tape, including various sizes (1" or larger) hypoallergenic adhesive and two various sizes (1" or larger) adhesive or self-adhesive</u>	<u>X</u>	<u>X</u>
<b>E. <u>Obstetrical</u></b>		
1. <u>Sterile obstetrical kit, including towels, 4" x 4" dressing, umbilical tape, sterile scissors or other cutting utensil, bulb suction, clamps for cord, sterile gloves, blankets, and a head cover</u>	<u>X</u>	<u>X</u>
2. <u>An alternate portable patient heat source or 2 heat packs</u>	<u>X</u>	<u>X</u>
<b>E. <u>Miscellaneous</u></b>		
1. <u>Sphygmomanometer (infant, pediatric, and adult regular and large sizes)</u>	<u>X</u>	<u>X</u>
2. <u>Stethoscope</u>	<u>X</u>	<u>X</u>
3. <u>Pediatric equipment sizing reference guide</u>	=	<u>X</u>
4. <u>Thermometer with low temperature capability</u>	<u>X</u>	<u>X</u>
5. <u>Paramedic or trauma shears capable of cutting heavy bandages, clothing, belts, and boots</u>	<u>X</u>	<u>X</u>
6. <u>Cold packs</u>	<u>X</u>	<u>X</u>
7. <u>Two flashlights with extra batteries or recharger, as applicable</u>	<u>X</u>	<u>X</u>
8. <u>Two blankets</u>	<u>X</u>	<u>X</u>
9. <u>One blanket with head cover made of heat-reflective material</u>	<u>X</u>	<u>X</u>
10. <u>Two sheets</u>	<u>X</u>	<u>X</u>
11. <u>Two cloth towels, each at least 12" by 12" in size</u>	<u>X</u>	<u>X</u>
12. <u>Five disposable emesis bags or basins</u>	<u>X</u>	<u>X</u>
13. <u>Lubricating jelly (water soluble)</u>	<u>X</u>	<u>X</u>

14. <u>Glucometer or blood glucose measuring device with reagent strips</u>	<u>X</u>	<u>X</u>
15. <u>Pulse oximeter with pediatric and adult probes</u>	<u>X</u>	<u>X</u>
16. <u>Automatic blood pressure monitor</u>	=	<u>X</u>
17. <u>Trauma arterial tourniquet</u>	<u>X</u>	<u>X</u>
18. <u>One scalpel</u>	=	<u>X</u>
19. <u>Mass casualty triage sorting capability for at least 50 individuals (triage tags)</u>	<u>X</u>	<u>X</u>
20. <u>Beginning April 2024, a method to electronically document patient information and treatment that is capable of being transferred</u>	<u>X</u>	<u>X</u>
<b>G. Infection Control (Latex-free equipment shall be available)</b>		
1. <u>Two sets of eye protection (full peripheral glasses or goggles, face shield)</u>	<u>X</u>	<u>X</u>
2. <u>Two masks, at least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator, which are fit-tested</u>	<u>X</u>	<u>X</u>
3. <u>Two pairs of gloves, non-sterile, and three pairs of non-latex gloves</u>	<u>X</u>	<u>X</u>
4. <u>Two jumpsuits or gowns</u>	<u>X</u>	<u>X</u>
5. <u>Two pairs of shoe covers</u>	<u>X</u>	<u>X</u>
6. <u>Disinfectant hand wash, commercial antimicrobial (towelette, spray, or liquid)</u>	<u>X</u>	<u>X</u>
7. <u>Disinfectant solution for cleaning equipment</u>	<u>X</u>	<u>X</u>
8. <u>Standard sharps containers</u>	<u>X</u>	<u>X</u>
9. <u>Disposable red trash bags</u>	<u>X</u>	<u>X</u>
10. <u>Ten protective facemasks or cloth face coverings for patients</u>	<u>X</u>	<u>X</u>
<b>H. Injury Prevention Equipment</b>		
1. <u>Safety vest or other garment with reflective material for each personnel member</u>	<u>X</u>	<u>X</u>
2. <u>Hazardous material reference guide</u>	<u>X</u>	<u>X</u>
3. <u>Hearing protection for personnel</u>	<u>X</u>	<u>X</u>
<b>I. Vascular Access</b>		
1. <u>The following intravenous solution administration sets:</u> a. <u>Four intravenous solution administration sets, capable of delivering 10 drops per cc</u> b. <u>Four intravenous solution administration sets capable of delivering 60 drops per cc</u>	=	<u>X</u>

2. <u>Antiseptic solution (alcohol wipes and povidone-iodine wipes)</u>	<u>X</u>	<u>X</u>
3. <u>Intravenous pressure infuser device or mechanical capability</u>	=	<u>X</u>
4. <u>Intravenous catheters, one each of 14, 16, 18, 20, 22, and 24 G</u>	=	<u>X</u>
5. <u>Two intraosseous needles, each capable of use in adult and pediatric patients</u>	=	<u>X</u>
6. <u>Venous tourniquet</u>	=	<u>X</u>
7. <u>The following syringes:</u> a. <u>Two 1 mL tuberculin,</u> b. <u>Four 3 mL,</u> c. <u>Four 5 mL,</u> d. <u>Four 10-12 mL,</u> e. <u>Two 20 mL, and</u> f. <u>Two 50-60 mL</u>	=	<u>X</u>
8. <u>Three 5 micron filter needles</u>	=	<u>X</u>
9. <u>Assorted sizes of non-filter needles</u>	=	<u>X</u>
10. <u>Intravenous arm boards, adult and pediatric</u>	=	<u>X</u>
<b>J. <u>Medications</u></b>		
1. <u>Agents specified in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at <a href="http://www.azdhs.gov/ems-regulatory-references">www.azdhs.gov/ems-regulatory-references</a>, that an administrative medical director may authorize for use based on the EMCT classification</u>	<u>X</u>	<u>X</u>
2. <u>Sterile saline for irrigation</u>	<u>X</u>	<u>X</u>

**ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS**

**R9-25-1101. ~~Application for Establishment of~~ Establishing Initial General Public Rates (Authorized by A.R.S. §§ 36-2232, 36-2239)**

- A.** ~~An applicant for a certificate of necessity or a certificate holder applying for initial general public rates shall submit an application packet to the Department that includes:~~
- ~~1. The applicant's name;~~
  - ~~2. The requested general public rates;~~
  - ~~3. A copy of the applicant's most recent financial statements or an Ambulance Revenue and Cost Report;~~
  - ~~4. For a consecutive 12-month period:
    - ~~a. A projected income statement; and~~
    - ~~b. A projected cash-flow statement;~~~~
  - ~~5. A list of all purchase agreements or lease agreements for real estate, ground ambulance vehicles, and equipment exceeding \$5,000 used in connection with the ground ambulance service, that includes the monetary amount and duration of each agreement;~~
  - ~~6. The identification of:
    - ~~a. Each of the applicant's affiliations, such as a parent company or subsidiary owned or operated by the applicant; and~~
    - ~~b. The methodology and calculations used in allocating costs among the applicant and government entities or profit or not-for-profit businesses;~~~~
  - ~~7. A copy of the applicant's contract with each federal or tribal entity for ground ambulance service, if applicable;~~
  - ~~8. Other documents, exhibits, or statements that may assist the Department in setting the general public rates;~~
  - ~~9. An attestation signed by the applicant that the information and documents provided by the applicant are true and correct; and~~
  - ~~10. Any other information or documents requested by the Director to clarify or complete the application.~~
- A.** As provided in R9-25-902(A)(19), an applicant wanting to establish initial general public rates as part of an application for an initial certificate of necessity shall include the following in the application packet submitted to the Department according to R9-25-902(A):
1. A copy of the applicant's financial statements, covering the most recent consecutive 12-month period;

2. A copy of the purchase agreements or lease agreements listed according to R9-25-902(A)(17), if not already submitted according to R9-25-902(A)(28);
3. For all business organizations or governmental entities affiliated with the applicant listed according to R9-25-902(A)(1)(d), the methodology and calculations used in allocating costs among the applicant and government entities or profit or not-for-profit businesses;
4. Other documents, exhibits, or statements that may assist the Department in setting the general public rates; and
5. Any other information or documents requested by the Director to clarify or complete the application.

**B.** A certificate holder applying for initial general public rates shall submit to the Department:

1. The following information, in a Department-provided format:
  - a. The identifying number on the certificate holder's current certificate of necessity;
  - b. The legal business or corporate name, address, telephone number, and facsimile number of the ground ambulance service;
  - c. Any other names by which the certificate holder is known;
  - d. The names of all other business organizations or governmental entities operated by the certificate holder related to the ground ambulance service;
  - e. The name, title, address, e-mail address, and telephone number of the following:
    - i. Each certificate holder and individual responsible for managing the ground ambulance service.
    - ii. The individual acting for the certificate holder according to R9-25-102,
    - iii. The individual to contact to access the ground ambulance service's records required in R9-25-908(B), and
    - iv. The statutory agent for the ground ambulance service or the individual designated by the certificate holder to accept service of process and subpoenas for the ground ambulance service;
  - f. The requested general public rates;
  - g. Whether the certificate holder agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
  - h. Attestation that the information or documents submitted to the Department are true and correct; and
  - i. The signature of the individual acting for the certificate holder according to R9-25-102 and the date signed;
2. A copy of the certificate holder's financial statements, covering the most recent consecutive

12-month period;

3. A projected Ambulance Revenue and Cost Report covering the first consecutive 12 months of operation under the requested general public rates in subsection (B)(1)(f);
4. A copy of all actual or anticipated purchase agreements or lease agreements to be used in connection with the ground ambulance service, including the monetary amount and duration of each agreement, for:
  - a. Real estate,
  - b. Ground ambulance vehicles, or
  - c. Equipment exceeding \$10,000;
5. For all business organizations or governmental entities affiliated with the certificate holder listed according to subsection (B)(1)(d), the methodology and calculations used in allocating costs among the certificate holder and business organizations or governmental entities;
6. Other documents, exhibits, or statements that may assist the Department in setting the general public rates; and
7. Any other information or documents requested by the Director to clarify or complete the application.

**C.** Each certificate holder requesting to apply for a uniform general public rate under A.R.S. § 36-2232(E) shall submit to the Department:

1. The information required in subsection (B)(1);
2. The documents required in subsections (B)(4) through (7);
3. A copy of the certificate holder's financial statements, covering the most recent consecutive 24-month period;
4. Projected Ambulance Revenue and Cost Reports covering the first consecutive 24 months of operation under the requested general public rates in subsection (B)(1)(f); and
5. A document signed by each certificate holder requesting to apply for a uniform general public rate under A.R.S. § 36-2232(E).

**B.D.** The Department shall review an application under subsection (B) or (C) according to R9-25-1106, R9-25-1107, and R9-25-1201 and approve or deny an the application under this Section according to 9 A.A.C. 25, A.R.S. § 36-2232 and Article 12 of this Chapter.

**R9-25-1102. Application for Adjustment of General Public Rates (Authorized by A.R.S. §§ 36-2234, 36-2239)**

**A.** A certificate of necessity holder applying for an adjustment of general public rates not exceeding the monetary amount calculated according to A.R.S. § ~~36-2234(E)~~ 36-2234(G) shall submit ~~an application form~~ an application to the Department that includes, in a Department-provided format:

1. The name of the ~~applicant~~ certificate holder;
2. The identifying number on the certificate holder's current certificate of necessity.
- ~~2-3.~~ A statement that the ~~applicant~~ certificate holder is making the request according to A.R.S. § ~~36-2234(E)~~ 36-2234(G);
- ~~3-4.~~ A statement that the ~~applicant~~ certificate holder has not applied for an adjustment to ~~it's~~ the certificate holder's general public rates within the ~~last~~ previous six months;
5. The amount of the requested general public rate.
- ~~4-6.~~ The effective date of the ~~proposed~~ requested general public rate adjustment; ~~and~~
- ~~5-7.~~ An attestation signed by the applicant that the information ~~and documents~~ provided by the applicant ~~are~~ certificate holder is true and correct; ~~and~~
8. The signature of the individual acting for the certificate holder according to R9-25-102 and the date signed.

**B.** ~~An applicant~~ A certificate holder requesting an adjustment of general public rates exceeding the monetary amount calculated according to A.R.S. § ~~36-2234(E)~~ 36-2234(G) shall submit ~~an~~ application packet to the Department that includes:

1. ~~The name of the applicant;~~ The following information in a Department-provided format:
  - a. The identifying number on the certificate holder's current certificate of necessity;
  - b. The legal business or corporate name, address, telephone number, and facsimile number of the ground ambulance service;
  - c. Any other names by which the certificate holder is known;
  - d. The names of all other business organizations or governmental entities operated by the certificate holder related to the ground ambulance service;
  - e. The name, title, address, e-mail address, and telephone number of the following:
    - i. Each entity and individual responsible for managing the ground ambulance service;
    - ii. The individual acting for the certificate holder according to R9-25-102;
    - iii. The individual to contact to access the ground ambulance service's records required in R9-25-908(B), and
    - iv. The statutory agent for the ground ambulance service or the individual designated by the certificate holder to accept service of process and subpoenas for the ground ambulance service;
- ~~2-f.~~ A statement that the ~~applicant~~ certificate holder is making the request according to A.R.S. § ~~36-2234(A)~~ 36-2234(C);
- ~~3-g.~~ The reason for the general public rate adjustment request;

- h. The requested general public rates;
- 4.i. A statement that the ~~applicant~~ certificate holder has not applied for an adjustment to its the certificate holder's general public rates within the ~~last~~ previous six months;
- 5.j. The effective date of the ~~proposed~~ requested general public rate adjustment;
- k. Whether the certificate holder agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
- l. An attestation that the information and documents provided by the certificate holder are true and correct, and
- m. The signature of the individual acting for the certificate holder according to R9-25-102 and the date signed;
- 6.2. A copy of the ~~applicant's~~ certificate holder's ~~most recent~~ financial statements, covering at least:
  - a. If applicable under A.R.S. § 36-2234(H), the most recent consecutive 24-month period; or
  - b. The most recent consecutive 12-month period;
- 7.3. A copy of the certificate holder's most recent Ambulance Revenue and Cost Report;
- 4. A projected Ambulance Revenue and Cost Report covering the first consecutive 12 months of operation under the requested general public rates in subsection (B)(1)(h);
- 8. ~~For a consecutive 12-month period:~~
  - a. ~~A projected income statement; and~~
  - b. ~~A projected cash flow statement;~~
- 9. ~~A list of all purchase agreements or lease agreements for real estate, ground ambulance vehicle, and equipment exceeding \$5,000 used in connection with the ground ambulance service, that includes the monetary amount and duration of each agreement;~~
- 10. ~~The identification of:~~
  - a. ~~Each of the applicant's affiliations, such as a parent company or subsidiary owned or operated by the applicant; and~~
  - b. ~~The methodology and calculations used in allocating costs among the applicant and government entities or profit or not for profit businesses;~~
- 11.5. ~~A~~ If the ground ambulance service has a contract with a federal or tribal entity, a copy of the applicant's certificate holder's contract with each federal or tribal entity for a ground ambulance service, if applicable unless the contract has been submitted to the Department and reviewed according to R9-25-1104;
- 6. A copy of all actual or anticipated purchase agreements or lease agreements to be used in

connection with the ground ambulance service, including the monetary amount and duration of each agreement, for:

- a. Real estate,
- b. Ground ambulance vehicles, or
- c. Equipment exceeding \$10,000;

7. For all business organizations or governmental entities affiliated with the certificate holder listed according to subsection (B)(1)(d), the methodology and calculations used in allocating costs among the certificate holder and business organizations or governmental entities;

~~12.8.~~ Other documents, exhibits, or statements that support the reason for the general public rate adjustment request as specified in subsection (B)(1)(g) and may assist the Department in setting the general public rates;

~~13.~~ An attestation signed by the applicant that the information and documents provided by the applicant are true and correct; and

~~14.9.~~ Any other information or documents requested by the Director to clarify or complete the application.

**C.** An applicant under R9-25-902, requesting to join a group of certificate holders, with a uniform general public rate established according to A.R.S. § 36-2232(E) and R9-25-1101(C), shall submit to the Department:

1. The information required in R9-25-902(A) and R9-25-1101(A)(1);

2. The documents required in subsections (B)(5) through (9);

3. A copy of the applicant's financial statements, covering the most recent consecutive 24-month period;

4. Projected Ambulance Revenue and Cost Reports covering the first consecutive 24 months of operation under the uniform general public rate; and

5. Documentation supporting the request, signed by each certificate holder with the uniform general public rate.

**D.** A certificate holder with a uniform general public rate, established according to A.R.S. § 36-2232(E) and R9-25-1101(C), that wants to establish a different general public rate shall submit to the Department:

1. A request according to subsection (A) or (B), as applicable; and

2. Documentation that the certificate holder has notified the other certificate holders with the uniform public rate of the certificate holder's intention of establishing a different general public rate.

**E.** A certificate holder with a uniform general public rate, established according to A.R.S. § 36-2232(E)

and R9-25-1101(C), that is notified according to subsection (D)(2) shall, within 60 calendar days after the date of notification of the Department's decision to grant the different general public rate:

1. Notify the Department of the intention to retain the rate currently on the certificate of necessity, or
2. Submit to the Department the information and documentation required in subsection (B).

**C.F.** The Department shall review an application under this Section according to R9-25-1106, R9-25-1107, and R9-25-1201 and approve or deny an the application under this Section according to 9-A.A.C. 25, A.R.S. §§ 36-2234 and 36-2239 and Article 12 of this Chapter.

**R9-25-1103. Application for a Contract Rate or Range of Rates Less than General Public Rates (A.R.S. §§ ~~36-2234(G) and (H)~~ 36-2234(I) and (K), 36-2239)**

**A.** ~~Before providing interfacility transports or convalescent transports, a certificate holder shall apply to the Department for approval of a contract rate or range of contract rates under A.R.S. § 36-2234(G).~~

- ~~1. For a contract rate or range of rates under A.R.S. § 36-2234(G), the certificate holder shall submit an application form to the Department that contains:
  - ~~a. The name of the certificate holder;~~
  - ~~b. A statement that the certificate holder is making the request under A.R.S. § 36-2234(G);~~
  - ~~c. The contract rate or range of rates being requested; and~~
  - ~~d. Information demonstrating the cost and economies of providing the transports for the requested contract rate or range of rates.~~~~
- ~~2. For a contract rate or range of rates under A.R.S. § 36-2234(I), the certificate holder shall submit the information required in R9-25-1102(B)(1) and (B)(6) through (B)(14).~~

**A.** A certificate holder applying for approval of a contract rate or range of rates under A.R.S. § 36-2234(I) shall submit to the Department:

1. The following information, in a Department-provided format:
  - a. The name of the certificate holder.
  - b. The identifying number on the certificate holder's current certificate of necessity.
  - c. A statement that the certificate holder is making the request under A.R.S. § 36-2234(I).
  - d. The contract rate or range of rates being requested.
  - e. The effective date of the requested contract rate or range of rates.
  - f. An attestation that the information and documents provided by the certificate holder are true and correct, and
  - g. The signature of the individual acting for the certificate holder according to

R9-25-102 and the date signed; and

2. Information demonstrating the cost and economics of providing the transports for the requested contract rate or range of rates, such as:

- a. A copy of the certificate holder's most recent Ambulance Revenue and Cost Report; and
- b. A projected Ambulance Revenue and Cost Report covering the first consecutive 12 months of operation under the requested contract rate or range of rates in subsection (A)(1)(d).

**B.** A certificate holder applying for approval of a contract rate or range of contract rates under A.R.S. § 36-2234(K) shall submit to the Department:

- 1. The information in subsection (A)(1), in a Department-provided format; and
- 2. The documents required in R9-25-1102(B)(2) through (8).

**B.C.** The Department shall review an application under this Section according to R9-25-1106, R9-25-1107, and R9-25-1201 and approve or deny an the application under this Section according to ~~9-A.A.C. 25;~~ A.R.S. §§ 36-2234 and 36-2239 and Article 12 of this Chapter.

**R9-25-1104. Ground Ambulance Service Contracts (A.R.S. §§ 36-2232, ~~36-2234(K)~~ 36-2234(M))**

**A.** A certificate holder shall not institute a new service contract between the ground ambulance service and a political subdivision of this state except as provided in A.R.S. § 36-2234(M).

**A.B.** Before implementing a ground ambulance service contract, a certificate holder shall submit to the Department for approval a copy of the contract with a cover letter that indicates the total number of pages in the contract. The contract shall:

- 1. A cover letter from the certificate holder, including:
  - a. The name of the certificate holder;
  - b. The identifying number on the certificate holder's current certificate of necessity;
  - c. A statement that the certificate holder is submitting a copy of a ground ambulance service contract according to A.R.S. § 36-2234(M);
  - d. The name of the other party to the ground ambulance service contract, including, if applicable, the name of a political subdivision;
  - e. The name, title, address, e-mail address, and telephone number of an individual representing the other party, as specified according to subsection (B)(1)(d), who the Department may contact about the proposed ground ambulance service contract if necessary;
  - f. The total number of pages of the proposed ground ambulance service contract, and
  - g. The signature of the individual acting for the certificate holder according to

R9-25-102 and the date signed; and

2. A copy of the proposed ground ambulance service contract that:

- 1.a. ~~Include~~ Includes the certificate holder's legal name and any other name listed on the certificate holder's ~~initial application required in R9-25-902(A)(1)(a)~~ current certificate of necessity;
- b. Includes the name of the other party to the ground ambulance service contract, as specified according to subsection (B)(1)(d);
- c. Identifies each type of service and level of service to be provided under the proposed ground ambulance service contract;
- 2.d. ~~List~~ Lists the general public rates or contract rate or range of rates approved by the Director according to R9-25-1101, R9-25-1102, or R9-25-1103;
- 3.e. ~~Comply~~ Complies with A.R.S. §§ 36-2201 through 36-2246 and ~~9 A.A.C. 25~~ this Chapter; and
- 4.f. ~~Not~~ Does not preclude use of the 9-1-1 system or a ~~similarly designated emergency telephone number~~ similar system.

C. Except as provided in R9-25-904(A)(2), the Department shall not approve a proposed ground ambulance service contract between two certificate holders.

B.D. The Department shall ~~approve or deny an application~~ review a proposed ground ambulance service contract under this Section according to A.R.S. §§ 36-2232 and, if applicable, 36-2234(M) and 9 A.A.C. 25; Article 12 of this Chapter.

E. The Department shall not enforce the provisions of a ground ambulance service contract unless the executed ground ambulance service contract has been approved by the Department and contains language authorizing the Department to enforce the provisions of the ground ambulance service contract.

**R9-25-1105. Application for Provision of Subscription Service or to Establish a Subscription Service Rate (A.R.S. § 36-2232(A)(1))**

A. ~~A~~ An applicant for an initial certificate of necessity or a certificate holder applying to provide subscription service, establish a subscription service rate, or request approval of a subscription service contract shall submit an application packet to the Department that includes:

- 1. The following information, in a Department-provided format:

  - a. The name of the applicant or certificate holder;
  - b. The identifying number on the certificate holder's current certificate of necessity, if applicable;
  - a.c. The number of estimated subscription service contracts ~~and documents supporting~~

~~the estimate, such as a survey of the service area;~~

- ~~b.d.~~ An estimate of the number of annual subscription service transports for the service area;
- ~~e.e.~~ The proposed subscription service rate;
- ~~d.f.~~ An estimate of the cost of providing subscription service to the service area;
- ~~g.~~ An attestation that the information and documents provided by the applicant or certificate holder are true and correct; and
- ~~h.~~ The signature of the individual acting for the applicant or certificate holder according to R9-25-102 and the date signed; and
- ~~e.~~ Any other information or documents that the certificate holder believes may assist the Department in setting a subscription service rate; and

- 2. A copy of the proposed subscription service contract;
- 3. Documents supporting the estimate in subsection (A)(1)(c), such as a survey of the service area;
- 4. Documents supporting the estimate in subsection (A)(1)(f); and
- 5. Any other information or documents that the certificate holder believes may assist the Department in setting a subscription service rate.

**B.** The Department shall review an application under this Section according to R9-25-1106, R9-25-1107, and R9-25-1201 and approve or deny a subscription service rate under this Section according to 9 A.A.C. 25, Article 12 of this Chapter.

**R9-25-1106. Rate of Return Setting Considerations (A.R.S. §§ 36-2232, 36-2239)**

**A.** In determining the rate of return on gross revenue in A.R.S. § 36-2239(I)(4), the Director shall consider a ground ambulance service's:

- 1. Direct ~~and indirect~~ costs for operating the ground ambulance service within its service area, including the costs of supplies and equipment;
- 2. ~~Balance sheet~~ Indirect costs for operating the ground ambulance service within its service area, such as costs that do not include the costs of supplies or equipment;
- 3. ~~Income statement~~ Financial statements;
- 4. Cash flow statement;
- ~~5-4.~~ Ratio between variable and fixed costs on the financial statements;
- ~~6-5.~~ Method of indirect costs allocation to specific cost-center areas;
- ~~7-6.~~ Return on equity;
- ~~8-7.~~ Reimbursable and non-reimbursable charges;
- ~~9-8.~~ Type of business entity;

- ~~10.9.~~ Monetary amount and type of debt financing;
- ~~11.10.~~ Replacement and expansion costs;
- ~~12.11.~~ Number of calls, transports, and billable miles;
- ~~13.12.~~ Costs associated with rules, inspections, and audits;
- ~~14.13.~~ Substantiated prior reported losses;
- ~~15.14.~~ Medicare and AHCCCS settlements, the difference between the general public rate a ground ambulance service assesses a patient and what a ground ambulance service receives from Medicare or AHCCCS as an allowable rate; and
- ~~16.15.~~ Any other information or documents needed by the Director to clarify incomplete or ambiguous information or documents.

**B.** In determining the rate of return on gross revenue in A.R.S. § 36-2239(I)(4), the Director shall not consider:

- 1. Depreciation of the portion of ground ambulance vehicles and equipment obtained through Department funding,
- 2. The certificate holder's travel and entertainment expenses that do not directly relate to providing the ~~ground ambulance service~~ EMS or transport;
- 3. The monetary value of any goodwill accumulated by the certificate holder, that is, the difference between the purchase price of a ground ambulance service and the fair market value of the ground ambulance service's identifiable net assets;
- 4. Any penalties or fines imposed on the certificate holder by a court or government agency;; and
- 5. Any financial contributions received by the certificate holder.

**C.** In determining just, reasonable, and sufficient rates in A.R.S § 36-2232(A)(1), ~~the director~~ Director shall establish rates to provide for a rate of return that is at least 7% of gross revenue, calculated using the accrual method of accounting according to generally accepted accounting principles, unless the certificate holder requests a lower rate of return.

**D.** ~~Rate~~ The Department shall calculate the rate of return on gross revenue is calculated by dividing Ambulance Revenue and Cost Report Exhibit A or Exhibit B net income or loss, as specified according to R9-25-909(A)(16) or (C)(14) as applicable, by gross revenue, as specified according to R9-25-909((A)(3)(b) or (C)(3)(b) as applicable.

**R9-25-1107. Rate Calculation Factors (A.R.S. § 36-2232)**

- A.** When evaluating a proposed mileage rate, the Department shall consider the following factors:
- 1. The cost of licensure and registration of each ground ambulance vehicle;
  - 2. The cost of fuel;

3. The cost of ground ambulance vehicle maintenance;
  4. The cost of ground ambulance vehicle repair;
  5. The cost of tires;
  6. The cost of ground ambulance vehicle insurance;
  7. The cost of mechanic wages, benefits, and payroll taxes;
  8. The cost of loan interest related to the ground ambulance vehicles;
  9. The cost of the weighted allocation of overhead;
  10. The cost of ground ambulance vehicle depreciation;
  11. The cost of reserves for replacement of ground ambulance vehicles and equipment; and
  12. Mileage reimbursement, as established by Medicare guidelines for EMS and transport provided by a ground ambulance service, including considerations to maximize Medicare reimbursement.
- B.** When evaluating a proposed BLS base rate, the Department shall consider the costs associated with providing EMS and transport.
- C.** When evaluating a proposed ALS base rate, the Department shall consider the factors in subsection (B) and the additional costs of ALS ambulance equipment, ~~and~~ ALS personnel, and professional liability insurance for ALS personnel.
- ~~**D.** In evaluating rates, the Director shall make adjustments to a certificate holder's rates to maximize Medicare reimbursements.~~
- D.** When evaluating a proposed critical care rate, the Department shall:
1. Consider the factors in subsections (B) and (C) and the additional costs of providing critical care services; and
  2. Ensure that the critical care rate is:
    - a. Equivalent to at least the amount for specialty care transport, as used in federal Medicare guidelines; and
    - b. Greater than an ALS base rate.
- E.** The Department shall determine the standby waiting rate as no higher than by dividing the BLS base rate divided by 4.

**R9-25-1108. Implementation of Rates and Charges (A.R.S. §§ 36-2232, 36-2239)**

- A.** Except as provided in A.R.S. § 36-2239(B) and (E), a certificate holder shall not institute a new general public rate, new contract rate or range of rates, or subscription service rate before receiving from the Department an approval of the new general public rate, new contract rate or range of rates, or subscription service rate.
- B.** Under A.R.S. § 36-2232(A)(1) and (4), the Department may periodically review and, if appropriate,

adjust rates and charges for a ground ambulance service to ensure that the rates and charges are just, reasonable, and sufficient.

**A.C.** A certificate holder shall assess rates and charges as follows:

1. When calculating a rate or charge, ~~the certificate holder shall:~~
  - a. Omit fractions of less than 1/2 of 1 cent; or
  - b. Increase to the next whole cent, fractions of 1/2 of 1 cent or greater;
2. ~~The certificate holder shall calculate~~ When calculating the number of miles for a transport, ~~by using~~ use one of the following, with the number of miles rounded as specified in subsection (C)(1):
  - a. The ground ambulance vehicle's odometer reading;
  - b. Software designed to calculate mileage, or
  - ~~b.c.~~ A regional map;
3. ~~The certificate holder shall calculate~~ When calculating the reimbursement amount for mileage of a transport, ~~by multiplying~~ multiply the number of miles for the transport by the mileage rate;
4. When transporting two or more patients in the same ground ambulance vehicle, ~~the certificate holder shall~~ assess to each patient:
  - a. Fifty percent of the mileage rate and one hundred percent of the ALS or BLS base rate; and
  - b. One hundred percent of:
    - i. The charge for each disposable supply, medical supply, medication, and oxygen-related cost used on the patient; and
    - ii. Waiting time assessed according to subsection ~~(C)~~: (E); and
5. When agreed upon by prior arrangement to transport a patient to one destination and return to the point of pick-up or to one destination and then to a subsequent destination, assess only the ALS or BLS base rate, mileage rate, and standby waiting rate for the transport.

**B.D.** When a certificate holder transfers a patient to an air ambulance, the certificate holder shall assess the patient the rates and charges for EMS and transport provided to the patient before the transfer.

**C.E.** A certificate holder shall assess a standby waiting rate in quarter-hour increments, except for:

1. The first 15 minutes after arrival to load the patient at the point of pick-up;
2. The time, exceeding the first 15 minutes, required by ambulance attendants to provide necessary medical treatment and stabilization of the patient at the point of pick-up; and
3. The first 15 minutes to unload the patient at the point of destination.

**D.F.** When a certificate holder responds to a request outside the certificate holder's service area, the

certificate holder shall assess ~~it's~~ the certificate holder's own rates and charges for EMS or transport provided to the patient.

**E.G.** When the Department or the certificate holder determines that a refund of a rate or a charge is required, the certificate holder shall refund the rate or charge within 90 days ~~from~~ after the date of the determination.

**R9-25-1109. Charges (A.R.S. §§ 36-2232, 36-2239(D))**

**A.** A certificate holder that charges patients for disposable supplies, medical supplies, medications, and oxygen-related costs shall submit to the Department:

1. a A list of the items and the proposed charges. ~~The list shall include a, and~~
2. A non-retroactive effective date.

**B.** A certificate holder shall submit to the Department a new list, containing the information required in subsection (A), each time the certificate holder proposes a change in the items or the amount charged. ~~The list shall contain the information required in subsection (A), including a non-retroactive effective date.~~

**R9-25-1110. Invoices (A.R.S. §§ 36-2234, 36-2239)**

**A.** ~~Each~~ A certificate holder shall ensure that:

1. ~~Each~~ invoice for rates and charges shall contain contains the following:
  - ~~1-a.~~ The patient's name;
  - ~~2-b.~~ The certificate holder's name, address, and telephone number;
  - ~~3-c.~~ The date of service;
  - ~~4-d.~~ An itemized list of the rates and charges assessed;
  - ~~5-e.~~ The total monetary amount owed the certificate holder; and
  - ~~6-f.~~ The payment due date; and

~~B.2.~~ Any subsequent invoice to the same patient for the same EMS or transport ~~shall contain~~ contains all the information in subsection (A) except the information in subsection ~~(A)(4)~~ (A)(1)(d).

**C.B.** ~~Charges may be combined~~ A certificate holder may combine into one line item the charges for multiple items if:

1. ~~the~~ The supplies are used together for a specific purpose, and
2. ~~the~~ The name of the combined item is included in the certificate holder's ~~disposable medical supply listing~~ list provided to the Department ~~under~~ according to R9-25-1109.

**D.C.** A certificate holder may combine rates and charges into one line item if required by a third-party payor.

## ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS

### R9-25-1201. Time-frames (Authorized by A.R.S. §§ 36-2235, 41-1072 through 41-1079)

- A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department is listed in Table 12.1. The applicant and the Director may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department is listed in Table 12.1. The administrative completeness review time-frame begins on the date that the Department receives an application form or an application packet.
1. If the application packet is incomplete, the Department shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the ~~postmark~~ date of the written request until the date the Department receives a complete application packet from the applicant.
  2. When an application packet is complete, the Department shall send a written notice of administrative completeness.
  3. If the Department grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is listed in Table 12.1 and begins on the ~~postmark~~ date of the notice of administrative completeness.
1. As part of the substantive review time-frame for an application for an approval other than renewal of an ambulance registration, the Department shall conduct inspections, conduct investigations, or hold hearings required by law.
  2. If required under R9-25-402, the Department shall fix the period and terms of probation as part of the substantive review.
  3. During the substantive review time-frame, the Department may make one comprehensive written request for additional documents or information and may make supplemental requests for additional information with the applicant's written consent.
  4. The substantive review time-frame and the overall time-frame are suspended from the ~~postmark~~ date of the written request for additional information or documents until the Department receives the additional information or documents.

5. The Department shall send a written notice of approval to an applicant ~~who~~:
- a. Who:
    - i. Meets the qualifications in A.R.S. Title 36, Chapter 21.1 and this Chapter for the type of application submitted; or
    - ~~b.~~ii. Is not in compliance with requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter, for the type of application submitted, that do not directly affect the health or safety of a patient and submits to the Department a corrective action plan that is acceptable to the Department to address issues of compliance; and
  - b. For an application under R9-25-902 or R9-25-903, which may include special conditions or limitations, including a shorter renewal term, according to A.R.S § 36-2235.
6. The Department shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. Title 36, Chapter 21.1, and this Chapter for the type of application submitted.
- D.** If an applicant fails to supply the documents or information under subsections (B)(1) and (C)(3) within the number of days specified in Table 12.1 from the ~~postmark~~ date of the written notice or comprehensive written request, the Department shall consider the application withdrawn.
- E.** An applicant that does not wish an application to be considered withdrawn may request a denial in writing within the number of days specified in Table 12.1 from the ~~postmark~~ date of the written notice or comprehensive written request for documents or information under subsections (B)(1) and (C)(3).
- F.** If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Department shall consider the next business day as the time-frame's last day.
- G.** A person may appeal a decision according to A.R.S § 36-2234 or Title 41, Chapter 6, Article 6.

**Table 12.1. Time-frames (in days)**

<b>Type of Application</b>	<b>Statutory Authority</b>	<b>Overall Time-frame</b>	<b>Administrative Completeness Time-frame</b>	<b>Time to Respond to Written Notice</b>	<b>Substantive Review Time-frame</b>	<b>Time to Respond to Comprehensive Written Request</b>
ALS Base Hospital Certification (R9-25-204)	A.R.S. §§ 36-2201, 36-2202(A)(3), and 36-2204(5)	45	15	60	30	60
Training Program Certification (R9-25-301)	A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)	120	30	60	90	60
Addition of a Course (R9-25-303)	A.R.S. §§ 36-2202(A)(3) and 36-2204(1) and (3)	90	30	60	60	60
EMCT Certification (R9-25-403)	A.R.S. §§ 36-2202(A)(2), (3), and (4), 36-2202(G), and 36-2204(1)	120	30	90	90	270
EMCT Recertification (R9-25-404)	A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), 36-2202(G), and 36-2204(1) and (4)	120	30	60	90	60
Extension to File for EMCT Recertification (R9-25-405)	A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), 36-2202(G), and 36-2204(1) and (7)	30	15	60	15	60
Downgrading of Certification (R9-25-406)	A.R.S. §§ 36-2202(A)(2), (3), and (4), 36-2202(G), and 36-2204(1) and (6)	30	15	60	15	60
Initial Air Ambulance Service License (R9-25-704)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215	150	30	60	120	60
Renewal of an Air Ambulance Service License (R9-25-704)	A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2),	90	30	60	60	60

	36-2213, 36-2214, and 36-2215					
Initial Certificate of Registration for an Air Ambulance (R9-25-801)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Renewal of a Certificate of Registration for an Air Ambulance (R9-25-801)	A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2240(4)	90	30	60	60	60
Initial Certificate of Necessity (R9-25-902)	A.R.S. §§ 36-2204, 36-2232, 36-2233, 36-2240	<del>450</del> <u>180</u>	30	60	<del>420</del> <u>120</u>	<del>60</del>
<del>Provision of ALS Services (R9-25-902)</del>	<del>A.R.S. §§ 36-2232, 36-2233, 36-2240</del>	<del>450</del>	<del>30</del>	<del>60</del>	<del>420</del>	<del>60</del>
<u>Renewal of a Certificate of Necessity (R9-25-903)</u>	<u>A.R.S. §§ 36-2233, 36-2235, 36-2240</u>	<u>90</u>	<u>30</u>	<u>60</u>	<u>60</u>	<u>60</u>
<del>Transfer of a Certificate of Necessity (R9-25-902)</del> <u>R9-25-904)</u>	<del>A.R.S. §§ 36-2236(A) and (B), 36-2240</del>	<del>450</del> <u>180</u>	30	60	<del>420</del> <u>120</u>	60
<del>Renewal of a Certificate of Necessity (R9-25-904)</del>	<del>A.R.S. §§ 36-2233, 36-2235, 36-2240</del>	<del>90</del>	<del>30</del>	<del>60</del>	<del>60</del>	<del>60</del>
Amendment of a Certificate of Necessity (R9-25-905)	A.R.S. §§ 36-2232(A)(4), 36-2240	<del>450</del> <u>180</u>	30	60	<del>420</del> <u>120</u>	60
Initial Registration of a Ground Ambulance Vehicle (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	90	30	60	60	60

Renewal of a Ground Ambulance Vehicle Registration (R9-25-1001)	A.R.S. §§ 36-2212, 36-2232, 36-2240	90	30	60	60	60
Establishment of Initial General Public Rates (R9-25-1101)	A.R.S. §§ 36-2232, 36-2239	<del>450</del> <u>180</u>	30	60	<del>420</del> <u>120</u>	60
Adjustment of General Public Rates (R9-25-1102)	A.R.S. §§ 36-2234, 36-2239	450	30	60	420	60
Contract Rate or Range of Rates Less than General Public Rates (R9-25-1103)	A.R.S. §§ 36-2234, 36-2239	450	30	60	420	60
Ground Ambulance Service Contracts (R9-25-1104)	A.R.S. § 36-2232	450	30	60	420	60
Ground Ambulance Service Contracts with Political Subdivisions (R9-25-1104)	A.R.S. §§ 36-2232, 36-2234(K)	30	15	15	15	Not Applicable
Subscription Service Rate (R9-25-1105)	A.R.S. § 36-2232(A)(1)	450	30	60	420	60



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

**TITLE 9. HEALTH SERVICES**

**CHAPTER 25. EMERGENCY MEDICAL SERVICES**

**ARTICLE 1. GENERAL**

**ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY**

**ARTICLE 10. GROUND AMBULANCE VEHICLE REGISTRATION**

**ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS**

**ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**January 2024**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 25. EMERGENCY MEDICAL SERVICES**

**ARTICLE 1. GENERAL**

**ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY**

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**ARTICLE 11. GROUND AMBULANCE SERVICE RATES AND CHARGES; CONTRACTS**

**ARTICLE 12. TIME-FRAMES FOR DEPARTMENT APPROVALS**

**1. An identification of the rulemaking**

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. Title 36, Chapter 21.1, Article 2, specifies requirements related to the regulation of ground ambulance services. The Department has adopted rules to implement these statutes in 9 A.A.C. 25. The rules in 9 A.A.C. 25, Articles 9, 10, and 11, establish requirements for ground ambulance certificates of necessity, for registration of ground ambulance vehicle, and for ground ambulance service rates and charges and contracts, respectively, to ensure the health and safety of patients being transported. In a five-year-review report approved by the Governor's Regulatory Review Council on July 6, 2017, the Department identified several issues with these rules and proposed a rulemaking to address these issues. These issues include non-compliance with A.R.S. § 41-1080, unclear requirements, requirements inconsistent with current standards of operation for ground ambulance services, and poor organization of the rules. All of these issues may affect the effectiveness of the rules and, thus, threaten the health and safety of patients being transported. The Department also requested input from stakeholders to identify additional issues. Laws 2022, Ch. 381, made statutory changes that required additional revisions of the rules. The rulemaking revises the rules in 9 A.A.C. 25, Articles 9 through 11, to address these issues and other issues identified by stakeholders as part of the rulemaking process and to restructure the rules to improve clarity, remove duplication, and increase effectiveness. Clarifying changes are also being made in Articles 1 and 12. This rulemaking, which was begun in 2019 and continued through the fall of 2023, included multiple

drafts, extensive comments from stakeholders, and many stakeholder meetings to develop the proposed rules.

**2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules**

- The Department
- Certificate holders (public and private ground ambulance services)
- Hospitals and other health care institutions
- Air ambulance services
- Fire services that are not certificate holders
- Emergency medical care technicians (EMCTs)
- Patients and their families
- General public

**3. Cost/Benefit Analysis**

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by statutes. Although five new FTEs were allocated to the Department to implement Laws 2022, Ch. 381, no new FTEs will be requested due to this rulemaking as long as the Department continues to receive an appropriation to support the five new FTEs. Annual costs/revenues changes are designated as minimal when more than \$0 and \$2,000 or less, moderate when between \$2,000 and \$20,000, and substantial when \$20,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. In this analysis, as in the new rules, citations to statutes are to the versions of statutes that will be in effect as of January 1, 2024.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
<b>A. State and Local Government Agencies and Federal or Tribal Health Care Institutions</b>			
Department	Having rules to follow that are clearer, consistent with statutes, and easier to understand and reflect current practice Including activities that will need to be monitored by the Department Clarifying requirements in the existing rules, including reorganizing existing requirements to improve understandability Specifying in rule the requirements in statutes related to inspections and	None None None None	Significant/ Minimal-to-moderate Significant Significant Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	<p>investigations to improve clarity and transparency</p> <p>Specifying requirements in statutes related to uniform general public rates to improve clarity and transparency</p> <p>Clarifying mechanisms for determining response times, priority for responses, compliance with response times, and public necessity</p> <p>Adding requirements for interfacility transports</p>	<p>None</p> <p>None</p> <p>None</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p>
Publicly owned ground ambulance services	<p>Having rules to follow that are clearer and reflect current practice</p> <p>Reorganizing Sections and making them consistent with statutes and clearer and easier to understand</p> <p>Revising and clarifying requirements related to transfer applications</p> <p>Revising and clarifying requirements for renewal applications</p> <p>Revising and clarifying requirements for amendment applications</p> <p>Revising and clarifying requirements related to public necessity and response times</p> <p>Gathering requirements into R9-25-908, with a focus on quality patient care</p> <p>Adding requirements for dispatching and scheduling</p> <p>Specifying requirements for interfacility transports</p> <p>Adding requirements for assessing performance</p> <p>Requiring the reporting of patient-level data for quality assurance purposes</p> <p>Requiring the submission of dispatch records</p> <p>Adding requirements related to quality assurance</p> <p>Adding requirements for the monitoring of EMCT performance</p> <p>Putting the content of the ambulance Revenue and Cost Report into rule</p>	<p>Minimal</p> <p>None</p> <p>None-to-substantial</p> <p>Minimal-to-substantial</p> <p>None-to-minimal</p> <p>None-to-substantial</p> <p>None-to-minimal</p> <p>Minimal/None-to-substantial</p> <p>None-to-substantial</p> <p>None-to-moderate/Up to substantial</p> <p>Minimal-to-moderate</p> <p>None-to-moderate</p> <p>Moderate-to-substantial</p> <p>Minimal-to-substantial</p> <p>None-to-minimal</p>	<p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>None</p> <p>Significant</p> <p>Significant</p> <p>Significant</p> <p>None</p> <p>Significant</p> <p>Significant</p>

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Including requirements related to inspections, corrective action plans, and enforcement Clarifying requirements in Article 10 Revising minimum standards for a ground ambulance vehicle Changing minor and major defects Adding required supplies and equipment, based on national industry standards Clarifying requirements related to requesting rates Changing other requirements in Article 11	None  None-to-minimal None-to-substantial  None-to-substantial Minimal-to-substantial  None-to-substantial  None-to-substantial	Significant  Significant Minimal-to-moderate / Significant Significant None  Significant  None-to-substantial/ Significant
Fire services that are not certificate holders	Making changes that may improve the standard of care for patients	None-to-substantial	Significant
<b>B. Privately Owned Businesses</b>			
Privately owned ground ambulance services	Having rules to follow that are clearer and reflect current practice Reorganizing Sections and making them consistent with statutes and clearer and easier to understand Revising and clarifying requirements related to transfer applications Revising and clarifying requirements for renewal applications Revising and clarifying requirements for amendment applications Revising and clarifying requirements related to public necessity and response times Gathering requirements into R9-25-908, with a focus on quality patient care Adding requirements for dispatching and scheduling Specifying requirements for interfacility transports Adding requirements for assessing performance Requiring the reporting of patient-level data for quality assurance purposes Requiring the submission of dispatch records	Minimal  None  None-to-substantial  Minimal-to-substantial None-to-minimal  None-to-substantial  None-to-minimal  Minimal/None-to-substantial None-to-substantial  None-to-moderate Up to substantial Minimal-to-moderate  None-to-moderate	Significant  Significant  Significant  Significant  Significant  Significant  None  Significant  Significant  Significant  Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Adding requirements related to quality assurance Adding requirements for the monitoring of EMCT performance Putting the content of the ambulance Revenue and Cost Report into rule Including requirements related to inspections, corrective action plans, and enforcement Clarifying requirements in Article 10 Revising minimum standards for a ground ambulance vehicle Changing minor and major defects Adding required supplies and equipment, based on national industry standards Clarifying requirements related to requesting rates Changing other requirements in Article 11	Moderate-to-substantial Minimal-to-substantial None-to-minimal None None-to-minimal None-to-substantial None-to-substantial Minimal-to-substantial None-to-substantial	None Significant Significant Significant Significant Minimal-to-moderate / Significant Significant None Significant None-to-substantial/ Significant
Hospitals and other health care institutions	Clarifying and updating requirements related to ground ambulance services Adding requirements for assessing response times Adding requirements related to providing interfacility transports of patients	None None None	Significant Significant Significant
Air ambulance services	Adding requirements related to providing interfacility transports of patients	None-to-substantial	None
<b>C. Consumers</b>			
EMCTs	Having rules to follow that are clearer and easier to understand Clarifying and updating requirements related to ground ambulance services and ground ambulance vehicles Adding requirements for the monitoring of EMCT performance	None None-to-minimal None-to-substantial	Significant Significant None
Patients and their families	Having rules that may increase the standard of care	None	Significant
General public	Having rules to follow that are clearer and easier to understand	None	Significant

- **The Department**

The rules in Articles 9, 10, and 11 were adopted by final rulemaking, effective February 13, 2001, to establish rules related to initial and renewal certificates of necessity; ground ambulance registration; and ground ambulance service rates, contracts, subscription service, other charges, and invoicing. At the time of the 2001 rulemaking, there were 83 ground ambulance services operating in Arizona. Of these, 20 were private, for-profit businesses; 11 were private, non-profit businesses; and 52 were owned or operated by political subdivisions. As of October 1, 2023, there were 100 ground ambulance services operating in Arizona under Article 9. Of these, 23 are private, for-profit businesses; five are private, non-profit businesses; 21 are municipal ground ambulance services; 47 are fire districts established under A.R.S. Title 48, Chapter 5; one is operated under tribal authority; two are operated by hospitals; and one is operated by a county. Under Article 10, the Department has 984 registered ground ambulance vehicles as of September 26, 2023. All fees collected by the Department, which have been unchanged since at least 1993, are specified in A.R.S. §§ 36-2212 and 36-2240 and are paid into the state general fund.

All but seven of the rules in Articles 9, 10, and 11 have been unchanged since adoption in 2001. The current rules are out-of-date, unclear, and poorly structured. Besides changes required by Laws 2022, Ch. 381, the current rules are also inconsistent with A.R.S. § 41-1080 and with the requirements in A.R.S. § 36-2247, as added by Laws 2019, Ch. 100, related to amendments due to a name change. There are also changes needed to reflect current application requirements, including changes that would allow for electronic submission of applications, as well as other documents, as available, such as back-up agreements, deployment plans, or plans for use of traffic preemption equipment, that may help the Department when reviewing an application. Changes to requirements to comply with new statutory requirements or that more clearly specify information that the Department currently collects and needs to make a decision on an application are expected to provide a significant benefit to the Department, especially in view of the new requirements for the review of initial or amended applications for a certificate of necessity under A.R.S. § 36-2233, and may result in a minimal-to-moderate reduction in costs incurred by the Department to provide extensive technical assistance to applicants. However, the increased monitoring required of the Department could result in up to substantial costs to the Department. The new rules also clarify that the Department may approve an application with special limitations or conditions, based on the best interest of the public. This change may also provide a significant benefit to the Department.

In addition, the new rules clarify other requirements in the existing rules, including requirements for insurance, record retention, staffing, communications and advertising, transport, and submission

of Ambulance Revenue and Cost Reports. They also include a reorganization of requirements, to improve understandability, for certificates of necessity, registration of ground ambulance vehicles, and rates and charges. The current rules rely heavily on applicants and certificate holders consulting statutes, in addition to the rules, to determine how to comply with requirements, and may leave much to interpretation. The new rules clarify requirements in statute to make it easier for regulated entities to comply with all requirements, and subsequently for the Department to regulate these entities. Additions to the rules to improve compliance with statutory requirements include clarifying that a certificate holder shall not discontinue service, except as provided in A.R.S. § 36-2238, if a transfer application is denied; specifying requirements for notification of a service area change under A.R.S. § 36-2233(I)(2); and clarifying that a certificate holder is required by A.R.S. § 36-2232(C)(4) to notify the Department of a change in the number or location of suboperation stations in the certificate holder's service area. Because certificate holders are in a better position to identify instances of a situation or circumstance specified according to A.R.S. § 36-2211(A) with an EMCT under the certificate holder's control, adding requirements for addressing such instances may lead to a problem being dealt with sooner, improving patient safety. The Department anticipates that these changes may provide a significant benefit to the Department.

Although the current rules include requirements in R9-25-1001(C) and R9-25-1005 for the inspection of a ground ambulance vehicle, the Department must rely on requirements specified in statutes for inspection of a ground ambulance service. To be more transparent about inspections and investigations and make requirements simpler and easier to understand, the new rules have added in the new R9-25-910 requirements for inspections and investigations of ground ambulance services and in the new R9-25-1004 requirements for ground ambulance vehicle inspections. The rules in R9-25-910 specify that the Department may conduct an inspection of a ground ambulance service, consistent with A.R.S. §§ 36-2204, 36-2212, 36-2232, and 36-2241, and an investigation of a ground ambulance service, consistent with A.R.S. § 36-2245. The rules in R9-25-1004 include requirements in the current R9-25-1005, but move the Table, currently embedded in R9-25-1005, into its own Section, Table 10.1, to improve ease of use. The Department believes that these changes may provide a significant benefit to the Department.

Another topic specified in statutes for which the Department currently has no specific rules is that of uniform general public rates under A.R.S. § 36-2232(E). The new rules add requirements for how certificate holders may apply for a uniform general public rate and for how applicants for an initial certificate of necessity may apply to join a group of certificate holders with a uniform general public rate under A.R.S. § 36-2232(E). Because a certificate holder with a uniform general public rate under A.R.S. § 36-2232(E) may find a need to apply for a different general public rate, the new rules add

requirements for how that would be done, including what is required of other certificate holders under a uniform general public rate under A.R.S. § 36-2232(E) if a certificate holder currently under the uniform general public rate is approved for a different general public rate. By reducing confusion and the need for technical assistance, the Department estimates that these changes may provide a significant benefit to the Department.

In the past, the rules were vague about the mechanism by which the Department determined appropriate response times and included response times on certificates of necessity, leaving much to the current R9-25-906(5). The new rules clarify and specify the factors the Department will consider when establishing response times, priority for responses, and compliance with response times. In order to be compliant with statutory requirements that require the Department to develop response time standards for urban, suburban, rural and wilderness areas, the new rules specify that the Department may develop a set of uniform standards for response times based on historical response time data, compare the actual performance of a ground ambulance service to the applicable uniform standard, and establish response times based on the applicable uniform standard and other factors brought up by an applicant. The new rules also clarify that the Department may take enforcement action, if appropriate, against a certificate holder based on response-time performance. In addition, the new rules update the basis for determining public necessity for an initial or amended certificate of necessity based on the emphasis on quality patient care and the public's best interest in Laws 2022, Ch 381. The Department believes that these additions/clarifications may provide a significant benefit to the Department.

The current rules contain very little about interfacility transports, those transports between two health care institutions, so there is currently little the Department can do in response to calls or complaints from health care institutions or patients about problems experienced with these transports. These interfacility transports may be routine, such as taking a patient from a nursing care institution to a hospital for a medical procedure, then returning the patient to the nursing care institution. They could also include the transport of a trauma victim from a small hospital to a trauma center, at which the patient can receive appropriate medical care. Hospitals cannot dial 9-1-1 to request the emergency transport of a patient. Public safety answering points (PSAPs) provide most dispatches to ground ambulance services in Arizona. PSAPs are required to maintain a telephone number that hospitals can dial to request an immediate dispatch of a ground ambulance vehicle, but the method by which a hospital may contact a ground ambulance service for an interfacility transport can vary by location. The new rules contain requirements for both emergency ambulance interfacility transports and for other, non-emergency interfacility transports. Based on stakeholder requests, the definition of "response time" now includes interfacility transports for patients with time-critical conditions,

including patients experiencing a stroke, ST Elevated Myocardial Infarction (STEMI), major trauma, or hemodynamically unstable condition. These are just as much of an emergency transport as one resulting from dialing 9-1-1, and the same times apply for a ground ambulance service to get to the scene after a call is received. For interfacility transports of patients with no time-critical condition, the new rules require certificate holders to ensure that a health care institution is provided with an estimated time of arrival and requirements for what a ground ambulance service must do if circumstances occur that prevent a ground ambulance vehicle from arriving within 60 minutes of the estimated time of arrival or as otherwise specified on the certificate holder's certificate of necessity. The Department anticipates that having requirements related to interfacility transports may provide the Department with a significant benefit.

- **Applicants for and certificate holders of ground ambulance service certificates of necessity, both publicly owned and private entities**

As mentioned above, there are approximately 100 certificate holders operating ground ambulance services in Arizona under Article 9. Over the past five years, the Department has received an average of approximately six new applications per year for certificates of necessity. As of September 26, 2023, the Department has 984 ground ambulance vehicles registered under Article 10. The number of registered ground ambulance vehicles varies due to older ground ambulance vehicles being taken out of service and new ones being added or because a ground ambulance vehicle's registration expires and an application for a new initial registration must be submitted. It is important to note that since Arizona's ground ambulance rules have not been substantially changed for over twenty years, the proposed costs outlined in this EIS will not be substantial for certificate holders who operate a ground ambulance service that has kept up to date with national industry standards.

The new rules provide clarity to applicants and certificate holders about requirements for initial and renewal applications for certificates of necessity, as well as for amendments to a certificate of necessity, the registration of ground ambulance vehicles, and initiating or adjusting rates and charges. Many of the additions reflect the current implementation of the 22-year-old rules. Although the proposed rules do not increase any application fees, which are specified in statutes, applicants for ground ambulance service certificates of necessity may incur minimal increased costs from additional submission requirements now specified in the rules, but may also receive a significant benefit from knowing beforehand what information and documents should or could be provided, instead of being asked by the Department for these documents once an application has been submitted, which can cause the application process to be longer overall. If all information and documentation is submitted up front during the initial submission of an application, then there might be fewer additional requests for information and, thus, decreased application processing time.

As mentioned above, the new rules also include a reorganization of requirements, which may improve understandability and reduce duplication, as well as allow for electronic submissions. To improve transparency, the new rules include better descriptions of the factors the Department may consider when making a decision, the bases for denying an application, and the appeal process. They also specify that the Department may approve an application with special limitations or conditions, based on the best interest of the public, which has been done for years without being mentioned in rule. The Department believes that these changes may provide applicants for and certificate holders of certificates of necessity with a significant benefit. While a product of requirements in Laws 2022, Ch. 381, rather than the rules themselves, the reduction in the time the Department has to make a decision on an application for an initial or amended certificate of necessity, which is included in this rulemaking, may also provide a significant benefit to an applicant or a certificate holder.

Currently, requirements for the transfer of a certificate of necessity are embedded in R9-25-902 and may be confusing as to what circumstances require a transfer, as well as the factors being considered when determining whether to approve a transfer application. This confusion has been addressed in the past by the adoption of two substantive policy statements: SP-052-PHS-EMS: Clarification for When a Transfer of a Certificate of Necessity Is Required Under A.R.S. § 36-2236 and 9 A.A.C. 25, Article 9, and SP-055-PHS-EMS: Clarification of Requirements for a Transfer of a Certificate of Necessity. The new rules clarify what circumstances require a transfer application to be submitted, what the certificate holder needs to do, what the person to whom the certificate of necessity may be transferred needs to do, and what the Department considers when making a decision about a transfer. The Department anticipates that the specification and clarification of requirements related to transfer applications may provide a significant benefit to a certificate holder wanting to transfer a certificate of necessity, as well as to the person to which the certificate may be transferred. A certificate holder wanting to transfer a certificate of necessity and the person to which the certificate holder plans to transfer the certificate of necessity may incur a substantial reduction in revenue only if the factors in the new rules cause the transfer application to be denied. However, if a transfer were not allowable for some reason under the new rule requirements, then an applicant may choose to apply for an initial certificate of necessity under the new rules instead.

Under the current rules in R9-25-904, an applicant for a renewal of a certificate of necessity must submit an application packet to the Department at least 60 days before the expiration date of the certificate of necessity. In the new, renumbered rules in R9-25-903, this deadline is reduced to 30 days, providing extra time for a certificate holder to apply and potentially a significant benefit, which should more than offset any extra time it may take to provide the additional information about the identity of the applicant being required, consistent with current implementation of the rules, or

attestation of complying with requirements. The new rules also replace an affirmation that the certificate holder has and is continuing to meet the conditions of the certificate of necessity with a more realistic requirement for other documentation if an instance of noncompliance has been identified, as well as requiring a certificate holder to update the Department about back-up agreements. In addition, the new rules clarify what happens if a certificate holder fails to file a timely renewal application, and requires notification of the Department if the certificate holder does not plan to renew the certificate of necessity, so the Department can arrange for temporary coverage of the service area, under A.R.S. § 36-2242, to protect public health and safety. The Department believes that for most certificate holders, these changes may cause the certificate holder to incur at most a minimal increase in costs. For a certificate holder that is not in compliance with requirements in statutes and rules and not providing good patient care, the new rules may cause the certificate holder to incur up to substantial additional costs to meet the required standards and improve patient care before renewal or face enforcement actions.

In the new rules, R9-25-905 is changed to comply with A.R.S. § 36-2247, as added by Laws 2019, Ch. 100, with respect to name changes. The requirements for other types of amendments are also specified in a manner to improve understandability and ease of use. To clarify when a change in service area does not require an amendment, just notification of the Department, subsection (D) is added to account for certificates of necessity granted under A.R.S. § 36-2233(I)(2). The Department anticipates that these changes may cause at most a minimal increase in costs to a certificate holder and may provide a significant benefit through the improved clarity of the requirements.

In the renumbered R9-25-906, the new rules update the basis for determining public necessity for an initial or amended certificate of necessity based on the emphasis in Laws 2022, Ch. 381. Because the EMS system in Arizona has evolved to the point where there are many overlapping service areas in which multiple ground ambulance services may provide more than one type of service, subsection (C) is being struck and combined with subsection (B), which is being revised to include all types of service, not just convalescent and interfacility transports, and updated to include the information the Department needs to make a decision. In the renumbered R9-25-907, the Department is clarifying and specifying the factors the Department will consider when establishing response times, priority for responses, and compliance with response times. The new rule specifies that the Department may develop a set of uniform standards for response times based on historical response time data, compare the actual performance of a ground ambulance service to the applicable uniform standard, establish response times based on the applicable uniform standard and other factors, and take enforcement action, if appropriate, against a certificate holder based on response-time performance. The rule also specifies how the Department will determine compliance with the plan related to interfacility

transports. The rules specify that the Department may periodically assess whether there have been changes in public necessity associated with a certificate of necessity and whether response times, the priority assigned by a certificate holder to a response, the plan for providing interfacility transports of patients with no time-critical condition, and overall compliance, as associated with a certificate of necessity, are appropriate to ensure quality patient care. The Department estimates that these changes may cause up to a substantial decrease in revenue or increase in costs, as applicable, to an applicant for an initial certificate of necessity or a certificate holder, especially for a certificate holder not currently providing quality patient care, and may provide a significant benefit through the improved clarity of the requirements. For an applicant proposing a business model focused on providing quality patient care or for a certificate holder already providing quality patient care, the financial impact would be expected to be much less.

With respect to interfacility transports, there are really no requirements in the current rules that specifically enable the Department to regulate them, although the Department has statutory authority to do so. Some certificates of necessity list them as a type of service, but many legacy ground ambulance services provide interfacility transports without specifically having them listed on their certificate of necessity. The new rules contain requirements that allow the Department to monitor interfacility transports and, potentially, require performance improvement. As mentioned above, the definition of “response time” includes interfacility transports of patients with a time-critical condition, at the recommendation of stakeholders. Therefore, all requirements related to response times would cover these transports. For an interfacility transport of a patient with no time-critical condition, the new rules contain: requirements for a certificate holder to have a plan for how to handle requests for these transports; performance requirements for the transports; and requirements for a certificate holder to analyze performance and report the results to the Department. The rules contain a delayed effective date for the latter requirement, regarding performance assessments of interfacility transports of patients with a non-time critical condition, in order to provide time for the Department and certificate holders to address concerns and develop procedures to comply with the new requirements. The new rules also require that instances of noncompliance with standards be reviewed through a quality improvement process. The Department anticipates that developing and implementing such a plan, and analyzing performance and how the plan is working, may cause a certificate holder that did not already have a plan for interfacility transports and was not already assessing performance to ensure quality patient care to incur up to substantial costs to comply with new requirements for interfacility transports, but may provide a significant benefit in ensuring the provision of quality patient care.

In the new R9-25-908, requirements related to operating a ground ambulance services are gathered into one place, rather than being scattered in several Sections. Requirements for insurance are moved from the current R9-25-909. Requirements for record retention are moved from the current R9-25-910, and records now required in rule are added to the list. Requirements for staffing are moved from the current R9-25-1004 and R9-25-1006, and references to requirements in R9-25-201 are added to improve clarity, understandability, and compliance. In addition, staffing requirements for the provision of critical care services have been added with a delayed implementation date to allow time to complete a rulemaking in Articles 3 and 4 of the Chapter related to the addition of requirements for Paramedics with a critical care endorsement. Requirements related to communications and advertising, currently in R9-25-911, are also moved into the new Section, as are requirements for transport, moved from the current R9-25-907 and R9-25-908. The Department believes that these additions/clarifications may impose at most a minimal cost to a certificate holder while also providing a significant benefit.

Several new requirements have been included in R9-25-908. Subsections (E)(1) and (2) of the new R9-25-908 specify requirements for dispatch and scheduling, including requirements for providing dispatch. These requirements were added to address issues the Department has identified related to patient health and safety, and the changes recognize the industry best practice of dispatching the closest, most appropriate ambulance unit to a scene to improve patient outcomes, especially for time-critical conditions. Requirements in subsection (E)(1) reflect how the dispatch system currently works in almost all service areas, while requirements in subsection (E)(2) serve more to clarify how things should be working than making a change. Therefore, they should have at most minimal economic effects on most certificate holders. For those certificate holders that do not have a process for dispatching a ground ambulance vehicle of another certificate holder to respond to a call to which a ground ambulance vehicle of the certificate holder cannot respond, or that, except as provided in subsection (E)(2), do not require the nearest ground ambulance vehicle to a patient's location in an overlapping service area to be dispatched in response to a 9-1-1 call may incur up to a substantial reduction in income or up to a substantial increase in costs due to the rule changes. These changes would not be expected to have any effect on a rural certificate holder that is the sole ground ambulance service in a service area.

The Department has received many calls expressing concerns with how long it takes for a ground ambulance service to arrive after a request is made for a routine interfacility transport. Other callers have expressed concern about the number of times an estimated time of arrival is amended. While the Department understands that circumstances may occur that would cause a ground ambulance service to prioritize a different transport over a routine interfacility transport, the Department also believes

that some standards are needed for the performance of interfacility transports of patients with no time-critical condition. The requirements in R9-25-908(E)(3) are standards for providing an interfacility transport of a patient with no time-critical condition, as briefly described above. These requirements were added to address issues the Department has identified related to patient health and safety, as well as concerns expressed by health care institutions. They require the entity receiving the request for the interfacility transport, which could be a PSAP or a person within a ground ambulance service's business structure or under contract, to provide an estimated time of arrival to the requester; give a certificate holder options as to how to handle the request if the estimated time of arrival changes to a later time, taking into consideration the patient's condition and needs, as well as health and safety; provide a benchmark, with a delayed implementation date, of how much leeway a certificate holder has to get a ground ambulance vehicle to the patient's location to account for traffic conditions, the completion of another ambulance run, or other factors; and require any interfacility transports that fall outside the benchmark to be reviewed through the ground ambulance service's quality improvement process to identify factors that may have contributed to the failure so they can be addressed. The rules allow for the estimated time of arrival to be specified in a written agreement between the certificate holder and the person requesting an interfacility transport. The Department believes that a certificate holder that is not currently monitoring and addressing issues related to interfacility transports of patients with no time-critical condition could experience up to a substantial cost to comply with these requirements, but might receive a significant benefit from improved patient care coordination and communication between health care institutions and the ground ambulance provider service.

The Department believes that a ground ambulance service concerned about providing quality patient care would already be analyzing performance. Subsections (G) and (H) of the new R9-25-908 contain requirements for a certificate holder to assess response times internally at least every six months for compliance with requirements on the certificate holder's certificate of necessity and, by January 1, 2025, to assess performance of interfacility transports of patients with no time-critical condition at least every six months. Once occurring, the results of the performance assessments are required to be reported to the Department annually. If performance does not meet the requirements specified in the rules, a certificate holder is required to submit a corrective action plan to describe how the failure to comply with requirements will be addressed. The Department estimates that these changes may cause a certificate holder that is already assessing performance and providing quality patient care to incur at most moderate increased costs, mainly associated with reporting information to the Department, while a certificate holder that is not currently assessing performance or is not providing quality patient care may incur a substantial increase in costs to implement a corrective

action plan to comply with these requirements. By enabling a certificate holder to provide better patient care, these requirements may also provide a significant benefit to a certificate holder.

The Department currently collects, through AZPIERS, patient level data about ambulance response and transport for quality assurance purposes under A.R.S. § 36-2402 from 90 of the 100 ground ambulance services with certificates of necessity issued under these rules. Ground ambulance services have been voluntarily reporting these data to the Department for over 10 years. To better enable the Department to assess the entire emergency medical system in Arizona, the new rules specify the content of a prehospital incident history report and require the submission of a prehospital incident history report for each patient, based on National EMS Information System (NEMSIS) standards that have been adopted by ambulance providers in every state. These data are only used for quality assurance purposes. The new requirements should cause at most a minimal additional cost to those ground ambulance services already submitting these data to the Department and provide a significant benefit in enabling better patient care. For those few certificate holders not currently submitting data, the Department will accept data from ground ambulance services using their own electronic Patient Care Reporting (ePCR) system, or they may receive free software from the Department to enable them to submit this data. The Department anticipates that a certificate holder not currently submitting data for quality assurance purposes may incur minimal-to-moderate additional costs due to this new requirement.

The content of dispatch records, required in R9-25-910(B)(8) of the current rules, is also clarified in the new rules in R9-25-908(J)(2) and includes the information necessary for the Department to assess compliance with requirements in the rules. When the current rules were adopted, most of this information was contained in paper records, copies of which a certificate holder would be required to submit to the Department upon request. Now the information is collected and stored electronically, and the new rules require a certificate holder to submit them to the Department electronically. These data include information required to calculate response times in compliance with A.R.S. § 36-2232(A)(3). The Department expects this submission to be through a mechanism that is currently in place and widely-used to reduce the potential for additional costs. The Department believes that the changes may cause a certificate holder to incur up to a moderate increase in costs to comply with the requirements.

With the emphasis placed on the provision of quality patient care by Laws 2022, Ch. 381, which made changes to multiple statutes within A.R.S. Title 9, Chapter 21.1, and national standards for the provision of emergency medical services, the new rules include requirements for assuring consistent, compliant performance. These new requirements include a certificate holder having policies and procedures for complaint resolution; assessing the ground ambulance's compliance with requirements

in statute and rule; notifying the Department of identified instances of noncompliance; and establishing, documenting, and implementing a quality improvement process. The new R9-25-908 includes requirements for the quality improvement process and for submitting data to the Department. The Department expects that these requirements may cause a ground ambulance service that already performs quality improvement processes and is already ensuring quality patient care to incur up to a moderate increase in costs to comply with the requirements, while a certificate holder that is not assessing how the provision of services affects the quality of patient care could incur up to substantial increase in costs due to the requirements.

The new rules also contain requirements for a certificate holder to address instances of a situation or circumstance specified according to A.R.S. § 36-2211(A) with an EMCT under a certificate holder's control, since they are in the best position to identify such a situation. The Department believes that most certificate holders are already monitoring the actions of their EMCTs and dealing with situations as they arise. For them, this new requirement is just a clarification. For a certificate holder that is not monitoring the actions of EMCTs, this new requirement could result in up to a substantial cost to implement the new requirements, depending on the number of actions that would need to be taken. The new rules also clarify that a certificate holder is required by A.R.S. § 36-2232(C)(4) to notify the Department of a change in the number or location of suboperation stations in the certificate holder's service area. The Department believes that this change may cause a ground ambulance service to incur up to a minimal increase in costs. Both new requirements may provide a significant benefit to a certificate holder.

In the current rules, the two versions of Ambulance Revenue and Cost Report, required under A.R.S. §§ 36-2232(A)(8) and 36-2246, are forms that are incorporated as Exhibits. While a certificate holder can currently fill out the forms electronically, rather than on paper, they have to be printed out and submitted in hard copy or made into a pdf. In the new rules, the two Exhibits are being repealed and replaced with a description of the information currently on the forms. While a certificate holder is expected to continue to refer to online forms for data entry, taking the forms out of rule could facilitate making data entry easier and more understandable, as well as making the rules much more concise, and may facilitate the electronic submission of data. The Department anticipates that this change may cause a certificate holder to incur as much as a minimal increase in costs to become familiar with the narrative, and may provide a significant benefit to certificate holders if reporting can be streamlined and the information submitted electronically.

As mentioned above, there are currently no rules in Article 9 for the inspection of ground ambulance services, and the Department must rely on requirements specified in statutes for these inspections. The new rules are more transparent about inspections and investigations and make the

process easier to understand. They also include provisions for the acceptance of a corrective action plan to address identified deficiencies, in lieu of the Department taking enforcement actions. The new rules also clarify actions the Department may take in enforcing the rules and statutes and include, not only actions against a ground ambulance service's certificate of necessity, but also actions against a certificate of registration of a ground ambulance vehicle operated by the ground ambulance service. The Department anticipates that the clarity and transparency of these changes may provide a significant benefit to a certificate holder.

The rules in 9 A.A.C. 25, Article 10, pertain to ground ambulance vehicles. Subsection (A) of R9-25-1001 is being added, consistent with what is currently in R9-25-801 for air ambulances, to clarify eligibility requirements. A new Section, R9-25-1002, is being added to clarify the term of a certificate of registration and that, according to A.R.S. § 36-2212(C), a certificate of registration is not transferable from one owner to another. At the suggestion of stakeholders, the requirements currently in R9-25-1003 are being included in the new Table 10.2 to improve clarity and understandability, and the current R9-25-1003 is being repealed, and a new Section, clarifying what changes affect the registration of a ground ambulance vehicle and the Department's actions upon notification of each type of change, is being renumbered into it. Rather than having requirements for inspections and an embedded Table describing major defects and minor defects in the same Section, the new rules split out the current requirements for inspections into the new R9-25-1004 and the new Table 10.1. The requirements in the current R9-25-1006 were also split out, with subsection (A) being moved to the new R9-25-1005(A) and subsection (B) being moved to R9-25-908(C)(1), and the Section repealed. The Department expects that these changes to clarify and restructure requirements may provide a significant benefit to a certificate holder and could impose at most minimal costs to become familiar with the new structure of the rules.

While most of the requirements in the new R9-25-1005 (current R9-25-1002) are unchanged, some revisions have been made to the list of minimum standards for a ground ambulance vehicle. The new rule includes requirements for stretchers and voice communication, moved from the current R9-25-1003, and specifies that the frame of a ground ambulance vehicle must support not only the gross vehicle weight, but also the anticipated weight of ambulance attendants, supplies and equipment, and patients. The new rules also update requirements related to steering systems, to accommodate ground ambulance vehicles with an electrical or other type of steering system that do not contain the components of a hydraulic power steering system; mirrors, to accommodate ground ambulance vehicles with optical devices other than mirrors that allow monitoring of the area surrounding the ground ambulance vehicle; and occupant restraint systems, rather than seat belts, and add them to Table 10.1. They also allow the use of a disposable fire extinguisher. The Department

believes that these changes may provide a minimal-to-moderate benefit to a certificate holder with a ground ambulance vehicle equipped with one of these alternate devices and a significant benefit to a certificate holder considering the purchase of a ground ambulance vehicle in the future. Although it is unlikely that the frame of a ground ambulance vehicle would not be able to support the additional weight of ambulance attendants, supplies and equipment, and patients, a certificate holder with a ground ambulance vehicle that could not support the additional weight required for operations could incur up to a substantial cost to bring the ground ambulance vehicle into compliance. The inclusion of the requirement for a ground ambulance vehicle to be equipped with a global positioning monitoring device, as well as the ability to request a waiver of the requirement, is the result of a statutory change, rather than a cost being imposed by the rules, themselves, but could result in up to a substantial increase in cost to a certificate holder, depending on the number of ground ambulance vehicles that would require these devices.

Most of the content in Table 10.1 is the same as what is in the Table embedded in the current R9-25-1005. However, there are a few differences. In the new Table 10.1, having inadequate fluid in the reservoir of the engine cooling system is added as a minor defect, as is the muffler not being securely attached to the chassis and tailpipe. Also added as minor defects are padding that is deteriorated and upholstery, floor, walls, or ceiling not capable of being disinfected. It is considered a major defect, rather than a minor defect, if the air cooling system of a ground ambulance vehicle is not capable of achieving and maintaining a 20° F difference between the air intake and the cool air outlet. Having an inadequate air cooling system is considered a major defect because it could jeopardize not only patient health and safety, but the ability of ambulance attendants to function effectively. Although the current R9-25-1002(25), new R9-25-1005(B)(25), requires insulation in a ground ambulance vehicle, the requirement is missing as a major defect or minor defect in the current rules and is added in the Table 10.1. Requirements for communication equipment and the ability to store equipment are also further specified to ensure patient safety. A fire extinguisher that is present, but non-functional, is also considered as a major defect, as is not having two means of egress from the patient compartment of a ground ambulance vehicle. The latter is critical to patient health and safety in a circumstance in which a ground ambulance vehicle is in an accident and the back doors are damaged and inoperable. The Department estimates that these changes could impose up to a substantial cost on a certificate holder, depending on the age, status of current equipment, and number of ground ambulance vehicles registered to the certificate holder, but provide a significant benefit in enabling the certificate holder to provide quality patient care.

Similarly, most of the content in Table 10.2 is the same as what is in the list in the current R9-25-1003. However, some equipment has been added, consistent with national guidelines and

industry standards. Most ground ambulance services providing quality patient care would already have the majority, if not all, of the equipment being added through the new rules. Differences include the addition of ventilation and airway equipment for ALS (endotracheal tube cuff pressure manometer [approximate cost of \$16]; one type of supraglottic airway device [approximate cost of \$40]; two long, large-bore needles for needle chest decompression [approximate cost of \$11]; hand-held nebulizer(s) [approximate cost of \$6]; aerosol masks [approximate cost of \$5]; nasogastric tubes [approximate cost of \$3]; a Non-Invasive Positive Pressure Ventilation (NIPPV) device with masks [approximate cost of \$75]; and in-line viral/bacterial filter [approximate cost of \$5]); stair chair or another mechanism for safely moving a patient in an upright sitting position [approximate cost of \$150]; gauze rolls [approximate cost of \$0.55]; a portable patient heat source or two heat packs for obstetrics [approximate cost of \$3 for 2]; thermometer with low temperature capability [approximate cost of \$19]; cold packs [approximate cost of \$10]; water soluble lubricating jelly [approximate cost of \$1]; automatic blood pressure monitor for ALS [approximate cost of \$20]; trauma arterial tourniquet [approximate cost of \$10]; triage tags [approximate cost of \$50]; disinfectant hand wash [approximate cost of \$2.50]; disinfectant solution for cleaning equipment [approximate cost of \$18]; protective facemasks or cloth face coverings for patients [approximate cost of \$18 for 100]; antiseptic solution [approximate cost of \$2 for 100]; intravenous arm boards for ALS [approximate cost of \$1.75]; and sterile saline for irrigation [approximate cost of \$2]. The cost of any items that are single-use may be passed onto patients for whom the item was used as charges, which are reported to the Department under R9-25-1109. While a requirement for a transcutaneous cardiac pacemaker is being added as subsection (B)(3) of the Table, this is actually a clarification rather than an additional piece of equipment because it is a function built into the monitor/defibrillator currently required in R9-25-1003(C)(12). In addition, the new rules require a ground ambulance vehicle to have a method to electronically document patient information and treatment that is capable of being transferred. This requirement, which has been in the draft rules since 2019, has a delayed implementation date of April 2024. Depending on the number of ground ambulance vehicles registered to a certificate holder that is not already following national guidelines and industry best practices and does not already require the ground ambulance vehicles to be equipped with the equipment being added, the new rules could cause the certificate holder up to a substantial increase in costs.

The new rules clarify requirements in Article 11 related to rates and charges, as well as remove duplicative requirements. They also add and clarify requirements related to uniform general public rates, which are absent in the current rules. In addition, the new rules separate and better delineate the information required for a request under A.R.S. § 36-2234(I) and under A.R.S. § 36-2234(K); specify the content of a cover letter, consistent with current practice, to include identifying information for

both parties to the contract, rather than just identifying the number of pages in the contract; and clarify that the contract needs to include the name of the other party to the ground ambulance service contract and the types of service to be provided. They also clarify that the Department will not approve a proposed ground ambulance service contract between two certificate holders, as that would be bypassing the certificate of necessity process, or enforce the provisions of a ground ambulance service contract, unless the executed ground ambulance service contract has been approved by the Department and contains language authorizing the Department to enforce the provisions of the ground ambulance service contract. With respect to subscription service, the new rules clarify that an applicant for an initial certificate of necessity may also apply to provide subscription service, establish a subscription service rate, or request approval of a subscription service contract, and specify that information identifying the applicant or certificate holder and a signature is required on an application and that documents to support estimates of the number of annual subscription service transports for the service area and proposed subscription service rate are required, as is current practice. Also consistent with current practice is the clarification that a certificate holder may not institute a new general public rate, new contract rate or range of rates, or subscription service rate before receiving approval from the Department. The Department anticipates that the clarifications may provide a significant benefit to an applicant or a certificate holder. It is possible that a certificate holder has a contract that does not meet requirements in the new rules. If so, the Department believes that the certificate holder could incur up to substantial costs to come into compliance.

Current requirements in R9-25-1106, R9-25-1107, R9-25-1108, R9-25-1109, and R9-25-1110 are also clarified in the new rules. Some of these clarifications may significantly benefit an applicant or a certificate holder. These include that the ALS base rate should include consideration of the costs of professional liability insurance for ALS personnel and how a critical care rate would be calculated, including that the critical care rate would be greater than the ALS base rate. In addition, the new rules add that a certificate holder may calculate the number of miles for a transport using software designed to calculate mileage, rather than having to use an odometer reading or regional map, which are the methods specified in the current rules. However, the new rules also specify that the Department may periodically review and, if appropriate, adjust rates and charges for a ground ambulance service to ensure that the rates and charges are just, reasonable, and sufficient, consistent with A.R.S. § 36-2232. Such a review could cause adjustments to be made to a certificate holder's rates and charges that could provide up to a substantial benefit to the certificate holder or result in up to a substantial loss of revenue.

- **Health care institutions, both publicly owned hospitals and privately owned hospitals and other health care institutions**

Health care institutions are a major stakeholder of these rules, as a health care institution relies on ground ambulance services to transport patients to the health care institution, from the health care institution, and between health care institutions. During 2022, there were 904,513 calls through the 9-1-1 system reported to AZPIERS by the 90 reporting certificate holders. Of these, 508,811 resulted in transports, 494,183 of which were to acute care hospitals. Certificate holders also reported 60,576 interfacility transports, of which 40,958 ended at an acute care hospital. The Department believes that clarifications in the new rules that enable ground ambulance services to provide better patient care may provide a significant benefit to a health care institution.

As mentioned above, hospitals cannot dial 9-1-1 to request the transport of a patient, even one with a time-critical condition requiring an emergency transport to a facility that can adequately treat the patient. In 2022, 19,511 of the 60,576 interfacility transports were for “emergent” patients, which would be the category under which patients with a time-critical condition would be reported. Interfacility transports for patients with time-critical conditions fit under the definition of “emergency ambulance services” in A.R.S. § 20-2801 and are now included in the definition of “response time” and, thus, the time it takes a ground ambulance service to respond to such a call will now be assessed by certificate holders and reported to the Department just as those transports resulting from a call to 9-1-1. The Department anticipates that hospitals may receive a significant benefit from this change.

Under the current rules, the Department has very little ability to regulate interfacility transports for most certificate holders, despite receiving many calls and complaints expressing concerns about them. The Department has received anecdotal information about estimated times of arrival being changed multiple times, or a ground ambulance vehicle showing up hours after it was expected. The new rules contain standards for the performance of interfacility transports of patients with no time-critical condition, including a benchmark for how much leeway a certificate holder has to get a ground ambulance vehicle to the patient’s location. They also require a certificate holder to review the factors that may have contributed to an interfacility transport not meeting the standards through the quality improvement process. Although they do not put a cap on the number of times an estimated time of arrival is amended, they do require a certificate holder to assess the performance of interfacility transports. They also allow the Department to collect information about how often an estimated time of arrival is amended and factors that may contribute to a ground ambulance service not meeting the standards in the rules. The Department anticipates that these changes may provide a significant benefit to a health care institution.

- **Air ambulance services**

These rules do not directly affect air ambulance services. However, air ambulance services most often provide transport to patients who need to get to an appropriate treatment facility quickly,

regardless of whether they are at the scene of a crash or in a hospital that does not have the appropriate resources. The rules contain requirements for a certificate holder to assess and take steps to improve performance related to response times. If a certificate holder provides transport using a ground ambulance vehicle that is timely, consistent, and reliable, a hospital may possibly make fewer requests for air transport. If so, the new rules could potentially indirectly cause an air ambulance service to lose up to a substantial amount in revenue.

- **Fire services that are not certificate holders**

Municipal fire services that do not transport patients are not directly affected by these rules, which are specific to ground ambulance services. However, the new requirements do contain requirements that may improve the standard of care provided to patients. As such, they could be construed as raising the standard of care that would be provided to a patient by an EMCT. Since fire services employ EMCTs, it is possible that a fire service that is not already following national standards could, of its own accord, institute similar improvements in the services they provide and, thus, could incur up to substantial costs to provide the same, higher standard of care as would be provided by the EMCTs of ground ambulance services. In doing so, the fire service could receive a significant benefit by improving patient care.

- **EMCTs**

According to the 2022 EMS Annual Report, approximately 21,000 EMCTs had active certifications in 2021. Of these, approximately 13,000 are EMTs, who can provide only BLS services, and approximately 8,000 are AEMTs, EMT-I(99)s, or Paramedics, who can provide ALS services. Many requirements in the current rules are clarified in the new rules, which may enable an EMCT to better understand requirements and, therefore, more easily comply with them and provide better patient care. The Department anticipates that clarifying requirements may provide a significant benefit to an EMCT.

The new rules update the operational equipment and supplies required on a ground ambulance vehicle, based on the level of service of use, consistent with national guidelines and industry standards. Some added equipment would be applicable to all levels of EMCTs, while others would affect only those levels of EMCTs who can provide ALS services. The Department believes that having this equipment may improve the ability of an EMCT to provide quality patient care and, thus, provide a significant benefit to an EMCT.

Similarly, the new rules update requirements for ground ambulance vehicles, themselves, to help ensure the safety of ambulance attendants, patients, and the general public. These include updates to requirements related to steering systems, mirrors, and occupant restraint systems, as well as additions to what is considered a major defect or minor defect as described above. The Department anticipates

that changing requirements to improve the safety of a ground ambulance vehicle may provide a significant benefit to an EMCT riding in it.

A.R.S. § 36-2211(A) specifies the grounds for an EMCT to be censured or put on probation or to have the EMCT's certification suspended or revoked. The new rules contain requirements for a ground ambulance service employing an EMCT to address instances of a situation or circumstance specified in the statute when identified, since they are more likely to identify such a situation. The Department believes that most EMCTs would not be affected by the new requirement. However, if an EMCT were suspected of an action specified in A.R.S. § 36-2211(A), the new requirement could result in up to a substantial loss of revenue to the EMCT if the EMCT's employer had not already been implementing this industry best practice before the new rules became effective.

- **Patients and their families**

As mentioned above, there were approximately one million calls reported to AZPIERS by certificate holders in 2022, with almost 570,000 transports. Since not every certificate holder currently reports to AZPIERS, the total number of ambulance responses and transports performed by a ground ambulance service under these rules is higher. The new rules clarify requirements in the existing rules, as well as add new requirements to improve patient health and safety, consistent with Laws 2022, Ch. 381, which places an emphasis on the provision of quality patient care. The Department believes that clarifying the current rules may make them easier to follow. The new rules establish requirements for a certificate holder to assess performance, both with respect to response times as well as for interfacility transports of patients with no time-critical condition. They also require the adoption of a quality improvement process to review services provided to patients to assure consistent, compliant performance and data submission to the Department. Updates to requirements for ground ambulance vehicles may make them safer to ride in, further improving patient safety. The addition of operational equipment and supplies required on a ground ambulance vehicle, based on the level of service of use, may improve the ability of EMCTs to provide quality services, protecting patient health. Changes/clarifications related to inspections and investigations by the Department may also protect the health of patients by helping the Department ensure quality patient care. The Department believes that the changes made in the new rules may increase the standard of patient care, providing a significant benefit to patients and their families.

- **General public**

Since any member of the public may become a patient, clarification of requirements in the existing rules and the other changes described for patients may also provide a significant benefit to the general public. These changes also enable the Department to improve the entire emergency medical system in the state, further benefiting the general public.

**4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking**

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

**5. A statement of the probable impact of the rules on small business**

**a. Identification of the small businesses subject to the rules**

Small businesses subject to the rules may include small ground ambulance services, small fire services, and small health care institutions.

**b. The administrative and other costs required for compliance with the rules**

Anticipated costs for complying with the rules are described under paragraph 3.

**c. A description of the methods that the agency may use to reduce the impact on small businesses**

The new rules reduce the impact on small businesses by specifying conditions under which a waiver would be granted for the statutory requirement for a ground ambulance vehicle to be equipped with a global positioning monitoring device. The rules also include requirements for a simplified version of the Ambulance Revenue and Cost Report, in compliance with A.R.S. § 36-2246. Since many small ground ambulance services would be in rural or wilderness areas and have geographic barriers or environmental conditions not found in more urban areas, the rules, in compliance with statute, provide for an applicant or certificate holder to describe these challenges and have them taken into consideration when the Department makes a decision. The new rules related to interfacility transports may benefit small health care institutions more than larger health care systems since these smaller health care institutions may not have the medical resources that a larger health care institution has, which could lead to a greater percentage of patients being transported to a more appropriate location for treatment.

**d. The probable costs and benefits to private persons and consumers who are directly affected by the rules**

The costs to private persons and consumers from the rules changes are described in paragraph 3.

**6. A statement of the probable effect on state revenues**

Current fees are set in statute in A.R.S. § 36-2212 for registration of ground ambulance vehicles and A.R.S. § 36-2240 for applications for a certificate of necessity; applications to amend,

transfer or renew a certificate of necessity; ambulances proposed to be operated by a ground ambulance service to which the certificate is granted, upon the issuance of an initial certificate of necessity; and annual regulatory activities for each ambulance issued a certificate of registration. The rulemaking does not include any new fees, so the Department does not expect the rules to affect state revenues.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking**

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

**8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data**

Not applicable

**To:** Rachel Garcia, EMS Bureau Chief, Arizona Department of Health Services  
Stacie Gravito, Administrative Counsel and Rules Office Chief, Arizona Department of Health Services

**From:** Jim Broome, CEO, Health Care Innovations

**Subject:** Comments for Oral Proceedings re: Ground Ambulance Rules on October 16, 2023.

On behalf of Health Care Innovations, a CON holder who provides ambulance services to large parts of southern Arizona, we formally submit the following comments regarding ADHS' proposed ground ambulance rules.

We believe the rules cannot move forward as currently drafted for a myriad of reasons and should be split up to ensure ADHS can meet the January 1, 2024, deadline as required by Laws 2022, Chapter 381 (HB 2609). To date we have submitted detailed comments on the rules, but we would like to address several key points that cannot go unaddressed by the Department at this time.

The first item that needs to be addressed is the issue of clear statutory authority for some of the new proposed regulations in the rule set. As stated in previous comments, the Legislature has been very intentional in crafting laws that establish clear and precise guardrails that all state agencies must abide by when it comes to rules, substantive policy statements and a variety of other agency actions. During the 2022 legislative session, HB 2599 was signed into law. The bill made a variety of changes to Title 41 to ensure that state agency practices are necessary and the proper authority to act is outlined in statute. Specifically, HB 2599 amended A.R.S. § 41-1030 (A) to include provisions that invalidate a rule that is not "consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with state law." If this subsection of law is not clear enough, the same bill amended A.R.S. § 41-1030 (D) which prohibits an agency from "making a rule that is not specifically authorized by statute." It is our belief that certain provisions and mandates contained in the proposed rule set do not comport with the aforementioned statutes and should be tabled until proper legislative authority has been granted to proceed.

The next item that lacks proper statutory authority and needs further consideration by all stakeholders is the issue of interfacility transports (IFT). Current statute and Department rule are silent regarding the regulation of IFTs, and no such authority was granted in HB 2609, so any proposed regulations around the issue need to be given proper statutory authority and go through a robust stakeholder process to ensure sound policy is crafted. During the HB 2609 stakeholder process the issue of regulating IFTs was intentionally set aside by the Legislature which means that any new regulations around this issue would conflict with the will of the Legislature and state law.

Additionally, we wish to highlight the confusion around the exempt rulemaking authority given to the Department with the passage of HB 2609. As is standard practice with all exempt

rulemaking authority, the Legislature will pass a bill and at times grant exempt rulemaking authority to the affected agency so that they can meet the deadlines outlined in state law. The exempt rulemaking authority granted to an agency only applies to rules that are necessary to implement the specific bill that was passed into law. In this case, exempt rulemaking was granted to the Department for the provisions of HB 2609. Any rules promulgated under the exemption must directly apply to the provisions of the bill in question. The session law granting the exemption states “for the purposes of this act, the department of health services is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.” This provision is very clear that any additional rule changes are not exempt and can only be changed by an additional rulemaking set or the passage of another bill at the Legislature. Moving forward at this time and pace with any rules not authorized by HB 2609 could have disastrous effects on the ambulance community. Any unintended consequences from rushed rulemaking will force the industry to abide by rules that were not properly vetted, and changes can only be made through new rulemaking or passing a bill at the Legislature, which are both slow processes.

In addition to the previously listed concerns, here is a list of major concerns that are still outstanding in the proposed rules:

- Waiver process for the GPS requirement – The waiver process needs more clarity regarding denials and the appeals process. It is our understanding from HB 2609 stakeholder meetings that a waiver must be granted if the applicant can demonstrate that the requirement is unable to be met.
- Applicability of the provisions of HB 2609 – Does the applicability clause of HB 2609 grandfather in existing CON holders. The language states that the bill’s changes apply to initial and amended CONs prospectively from January 1, 2024. Clarity is needed on what constitutes an amended CON.
  - Would this include simple administrative changes such as a change of address, change of station location, or change of statutory agent or individual responsible for managing the ground ambulance service within an organization due to retirement or promotion?
  - Would this include changing from charging for supplies to bundling the costs of supplies into the base rate or rate adjustments requested?
  - Would this include the renewal and/or annual rate increase adoption?
- Rulemaking Exemption – Since the exemption only applies to HB 2609 provisions, it is very problematic that any other changes that present unintended consequences will take a significant amount of time to change. The industry will be forced to comply with harmful rules until a fix can be made which will impact patients and providers.
- “Scene Locality” definition remains unchanged. No rationale for this definition change has been given by the Department. The new definition conflicts with Census Bureau since they do not reference suburban or wilderness. The existing definitions are currently used and understood by the industry, so any change is not necessary at this time.

- R9-25-904 Transfer of a CON – The breadth of this language exceeds the call of HB 2609 and given its vagaries, could subject CON holders to recurring regulatory processes (for example, the change in a fire chief could be grounds for the Bureau to suggest that the CON has been transferred and require that entity to proceed back through the CON licensure process). The addition of language that prohibits overlapping CON holders from executing back-up agreements that are not solely short-term arrangements is also problematic. In a health and safety environment, having back-up among existing CON holders serves the public good and should not result in more arduous and duplicative regulatory processes.
- R9-25-906 Determining Public Necessity – Since a public necessity determination will determine if a CON is issued it is crucial that this language be given more consideration, review and analysis.
- Interfacility Transfers (R9-25-902,905,906 and 908) – The rules still contain many new requirements regarding I.F.T.s, which must be thoroughly discussed with all stakeholders and authorized by the Legislature. Continuing with these new requirements at the current pace this rules set is moving could have many unanticipated consequences for providers. One salient example showing more discussion is needed is the proposed mandate in R9-25-908 (E)(3)(c), which requires ambulance provider I.F.T.s for patients without a time-critical condition to be within 60 minutes of the estimated time. The 60-minute timeframe has changed multiple times during the drafting process, which shows that thoughtful discussion should be had on the issue. The Hospital group that was at one of the last stakeholders' discussions admitted they had no data recorded to present reference to their complaints of long wait time for IFTS. R9-25-908 E-3-b-iii Considerations needs to include "consideration of the 911 emergency resources of a sole provider CON", because this assessment is always performed when considering an IFT. They commented that it was too cumbersome to document these instances. In an in-person meeting with AZDHS, a table was presented showing historical response times for IFTS now that data is being ignored and arbitrary response times and directives are being mandated.
- R9-25-901 (17) Definition of "critical care rate" needs to be rewritten as "greater than the ALS rate", and the proposed language referencing "equivalent to federal Medicare guidelines" needs to be removed. This limits the reimbursement for critical care transports that have a higher operational cost and higher liability providing critical care services. A charge for a critical care rate, also known as a specialty care transport, will never be at a rate less than the ALS rate set by ADHS BEMSTS.
- R9-25-907 Determining Response Times DHS has changed their position multiple times on what they intend to do with response times. Recently DHS has stated they plan to use their standard response times for quality assurance/data collection or something like that, but it is unclear what that means. They also have said they will make a report available for the annual reporting of response times requirement, but again what this will entail has not been made clear by DHS. Does the annual reporting of response times apply to all CON's or just new/amended? HB 2609 requires response times to be calculated from the time the Public Safety Answering Point ("PSAP") contacts an ambulance service for dispatch to the time the ambulance service arrives at the

dispatched location. All the other factors involved such as Scene Locality, urban, suburban, rural and wilderness areas are confusing the issue and are not required by HB 2609.

- R9-25-908 (C)(5)(b) Staffing requirements for ambulances providing critical care services. Specifically, the endorsement requirement for providers when ADHS has yet to create such an endorsement is problematic and will create additional staffing issues for providers.
- R9-25-908 (E) is confusing. As written, it appears to require all CON Holders to contract for dispatch services, which lacks statutory authority. In an "IF" is inserted at the beginning of the subsection, then the amendments impose an unfair level of scrutiny on CON holders who opt to contract with external dispatch services. While these provisions outline detailed requirements for such contracts, there are no corresponding mandates for CON holders who manage their internal dispatch operations. This glaring inconsistency not only penalizes those seeking external partnerships but also creates an environment where internal operations remain unchecked.
- R9-25-1102 Requirements for Uniform Rates in the process outlined in this section will no longer create uniform rates and should contain an opt-out provision for providers. Uniform Rate Groups are not addressed in HB 2609 and should be dealt with separately. Currently the Director may establish a uniform rate if all the providers in the area agree. Allowing one of the CON holders to opt out, or awarding a CON, in the area of an existing uniform rate, with a rate different of the uniform rate means that not all the providers in the area agree to a uniform rate and it would cease to exist.
- R9-25-1106 (C) Rate of Return provisions remain primarily unchanged. The proposed rule caps a provider's rate of return at 7% unless the provider gives sufficient justification for a higher rate of return. ADHS BEMSTS does not have the statutory authority for this change, and it is not the state's role to interfere with the financial health of a CON holder. Lastly, asking for a "sufficient" justification is vague and will lead to unelected bureaucrats making financial decisions for a CON holder.
- R9-25-1108 (B) Provisions allow ADHS BEMSTS to review periodically and, if appropriate, adjust rates and charges for a ground ambulance service to ensure that the rates and charges are just, reasonable, and sufficient. This new provision lacks clear statutory authority to implement such a process. Although A.R.S. § 36-2232 (A)(1) grants ADHS the ability to "determine, fix, alter and regulate just, reasonable and sufficient rates for the provision of ambulances," any changes in rates are typically done through the amendment process, rather than through agency fiat. The statute does not say that ADHS can periodically review rates and adjust them accordingly. Additionally, although A.R.S. § 36-2232 (A)(4), as amended by HB 2609, requires ADHS BEMSTS to update response times based on a minimum population density and geographic and medical considerations and the financial impact on rates every six years with an additional review if requested by outlined partners, nowhere is authority granted to ADHS BEMSTS to initiate a review and adjustment of rates and charges independently. This is concerning because if you compare this language with R9-25-1106 (C), it will mean that ADHS BEMSTS could decide if you have a rate of

return higher than 7% to reduce a provider's rates to below the 7% threshold.

Due to reasons outlined above we respectfully request that the Department only move the rules necessary to implement HB 2609 forward and all other rules continue to go through the stakeholder process. A splitting of the rule set will allow the Department to meet their January 1, 2024, deadline as required by HB 2609 and allow time for stakeholders to come to consensus on other matters and clear up the issue of statutory authority before implementing additional regulations. We believe under A.R.S. 41-1022 that you can request a supplemental rule making on the items not specifically in HB 2609, and then submit your package on HB2609 as provided in A.R.S. 41-1044.



Ruthann Smejkal &lt;ruthann.smejkal@azdhs.gov&gt;

**Re: Letter comments on proposed ground ambulance rules**

1 message

**Stacie Gravito** <stacie.gravito@azdhs.gov>  
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>  
Cc: Siman Qaasim <siman.qaasim@azdhs.gov>

Mon, Sep 18, 2023 at 11:28 AM

Thank you!

On Mon, Sep 18, 2023 at 11:21 AM Ruthann Smejkal <ruthann.smejkal@azdhs.gov> wrote:  
They have been added to the rulemaking file.

On Thu, Sep 14, 2023 at 12:01 PM Stacie Gravito <stacie.gravito@azdhs.gov> wrote:  
Comments on the ground ambulance rules. Thank you!

----- Forwarded message -----

From: **Rick Hazelton** <rick@p3gr.com>

Date: Thu, Sep 14, 2023 at 11:14 AM

Subject: Fwd: Letter comments on proposed ground ambulance rules

To: [rachel.garcia@azdhs.gov](mailto:rachel.garcia@azdhs.gov) <rachel.garcia@azdhs.gov>, [stacie.gravito@azdhs.gov](mailto:stacie.gravito@azdhs.gov) <stacie.gravito@azdhs.gov>

Stacie and Rachel,

I messed up your email addresses when I first sent this email, so I am sending it again.

I apologize for the mistake.

Thanks,

Rick Hazelton

322 W Roosevelt St  
Phoenix, AZ 85003  
Office: 602-441-5761  
Cell: 623-687-7427  
Email: [rick@p3gr.com](mailto:rick@p3gr.com)

Begin forwarded message:

**From:** Rick Hazelton <rick@p3gr.com>**Subject:** Letter comments on proposed ground ambulance rules**Date:** September 14, 2023 at 11:11:42 AM MST**To:** [rachel.garcia@azleg.gov](mailto:rachel.garcia@azleg.gov), [stacie.gravito@azleg.gov](mailto:stacie.gravito@azleg.gov)**Cc:** Meghaen Dell'Artino <meghaen@p3gr.com>, [eugene.livar@azdhs.gov](mailto:eugene.livar@azdhs.gov)

Rachel and Stacie,

Attached this message is a letter outlining some comments on the proposed ground ambulance rules for your records.

Thank you for your attention to this matter.

Thanks,

Rick Hazelton

322 W Roosevelt St  
Phoenix, AZ 85003  
Office: 602-441-5761  
Cell: 623-687-7427  
Email: [rick@p3gr.com](mailto:rick@p3gr.com)

--

## Stacie C. Gravito

she/her/hers ([what's this?](#))

*Interim Office Chief || Administrative Counsel || HIPAA Privacy Officer*

Administrative Counsel and Rules

Policy and Intergovernmental Affairs

Arizona Department of Health Services

[150 N. 18th Ave., Suite 200, Phoenix, AZ 85007](#)

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--

***Ruthann M. Smejkal, Ph.D.***

### **Senior Rules Analyst**

Arizona Department of Health Services

150 North 18th Avenue, Suite 200, Phoenix, AZ 85007

Direct 602-364-1230

Email [ruthann.smejkal@azdhs.gov](mailto:ruthann.smejkal@azdhs.gov)

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**Stacie C. Gravito**

she/her/hers ([what's this?](#))

*Office Chief || Administrative Counsel || HIPAA Privacy Officer*

Administrative Counsel and Rules

Policy and Intergovernmental Affairs

Arizona Department of Health Services

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August 15, 2023

Rachel Garcia  
Arizona Department of Health Services, EMS Bureau Chief  
150 North 18<sup>th</sup> Avenue  
Phoenix, AZ 85007

Dear Ms. Garcia,

As you may know, the undersigned has been involved in the Department of Health Services (ADHS) rulemaking on ambulance rules for almost four years. While the agency has been taking input from the various stakeholders, very few significant changes have been incorporated into the current June 2023 draft.

Ambulance regulation is an integral part of the healthcare continuum in Arizona. Ambulance regulation requires cooperation between all affected stakeholders and the regulating entity. When ADHS began the rulemaking process at the end of 2019 and into 2020, we all took an active role to help ensure the new rules struck a balance between assisting the ambulance industry to ensure they provide the best service while protecting the health and safety of all Arizonans. With this common goal in mind, we offered comments and suggestions to ADHS to incorporate into the proposed rule set. Throughout the process, ADHS has accepted some of our proposed changes but has also ignored specific concerns raised by the industry and has forged ahead with the rules draft with no rationale given for many of the proposed changes. It is crucial that ADHS listens to concerns from providers who represent all the diverse areas of the state.

Last, we would like to express our concerns with how the rulemaking process has proceeded. We understand that a five-year review was conducted in 2017, and plans were made to update the ambulance rules. However, the current package is being pushed through under cover of a rulemaking exemption, which expires at year's end. This exemption was given to ADHS with the passage of HB 2609. The rulemaking exemption granted by HB 2609 only applies to the changes made by the bill. However, the current proposed ground ambulance rule set goes above and beyond what has been authorized by the legislature. In a Director's Blog dated July 13, 2023, ADHS states, "We are currently working on updating Arizona's ambulance rules to align with House Bill 2609 and new statutory requirements that go into effect on January 1, 2024." The blog explicitly states the rulemaking is in direct response to HB 2609, so If ADHS wishes to continue the ground ambulance rulemaking for changes that are not a result of HB 2609, they should do so by way of the standard rulemaking process to allow for proper thought and consideration by all parties involved instead of fast-tracking these extensive rule changes in the last few months of the year.

The undersigned stakeholders have concerns with the June 2023, Article 9, 10, and 11 draft Ground Ambulance Rules. We have continually expressed these concerns directly to ADHS, but the Department needs to have a meaningful conversation regarding justification and or statutory authority for the changes. We now have no option but to bring these concerns to your office and the State Legislature. Our most significant concerns are:

## **Article 9**

### **R9-25-901. Definitions**

The proposed Rule deletes the definitions in subsections 37 (Rural area), 47 (Suburban area), and 52 (Urban area) and replaces them with a new definition in subsection 38, "Scenic locality." For the following reasons, we request that the individual definitions be left as is or incorporated verbatim into the Scenic locality definition:

- There is no need to change the existing definitions other than agency convenience.
- The current definitions more than adequately comply with the statutory requirements and are well-understood by the industry.
- Applying singular dispatch thresholds statewide in a one size fits all manner fails to consider inconsistent population densities throughout the state. The proposed approach may work in metropolitan areas where population density is consistent, but for the aforementioned reasons, the proposed changes are not workable in areas that are less urban.
- The new subsection 40 would result in rural areas such as Benson and Safford being defined as urban and, with the unreasonable statewide universal response time requirements in Article 9, would result in many rural towns having required response times that are the same as metropolitan Phoenix. Such unreasonable standards will result in much higher rates and the likely loss of ambulance coverage in some rural areas. The lack of qualified personnel will mean that the ambulance services in those areas will not be able to comply with the response time requirements.

### **R9-25-902, R9-25-905, R9-25-906 and R9-25-908 Interfacility Transports (IFT)**

Article 9 references IFTs for patients with time-critical conditions and without a time-sensitive condition. The Article, in multiple places, R9-25-907(B) states that the Director may consider numerous things in determining the response times assigned to a CON. This includes in subsection (B)(8)(b) the anticipated volume of 9-1-1 dispatches and of interfacility transports. It requires CON holders to report estimated amounts of IFTs to be completed as well as response times for said transfers. Then in R9-25-906(B)(3 & 4) it identifies compliance with the 90% and 100% response time requirements for 9-1-1 and interfacility transports for patients with time-critical condition as criteria for issuing a CON to more than one ground ambulance service for the same service area. Tying 9-1-1 transports and interfacility response times together will be extremely problematic for the system and patients. In many cases, awarding additional CONs to a service area will result in higher rates and the replacement of an historically reliable ambulance service with two unsustainable ambulance services. R9-25-908 (E)(3)(c) specifically requires IFT arrival times for a patient without a time-sensitive critical condition to be within 60 minutes of the dispatch for 90% of IFTs in what appears to be a very workable solution to the question of

interfacility response times. However, in rural areas, due to limited resources, it creates unreasonable pressures on the ambulance provider. The IFT language throughout the rules draft needs to be revised for several essential reasons:

- First, establishing required response times for IFTs creates a potentially untenable situation for ground ambulance providers. For example, suppose an ambulance provider receives a dispatch for an IFT with a time-critical condition and a 9-1-1 dispatch for the same ambulance. In that case, the provider will be forced to choose between following the administrative code or responding to the most pressing call and risk ADHS action for not following the rules.
- Second, establishing the much more relaxed response time requirements for IFTs in the latest draft will likely result in rural ambulance providers being pressured to take long-distance transfers in unsafe conditions for both the patient and the ambulance crew.
- Third, and the more important reason is that the proposed rules exceed the Department's statutory authority to regulate IFTs. Although the Department has general statutory authority to regulate ambulance service providers, no such specific authority exists in the statute, allowing the Department to regulate IFTs to the extent outlined in the draft rules.

We work collaboratively to meet the needs of both the 9-1-1 system and interfacility transports. A collaboration in which all parties involved have a discussion and make appropriate arrangements for interfacility transport that work within the 9-1-1 system. This process should remain unchanged to uphold the integrity of emergency 9-1-1 calls.

### **R9-25-901 Critical Care Rate Definition**

This proposed Rule defines "critical care rate" as a monetary amount that is set by ADHS for a CON holder to bill for an individual receiving "critical care services." The definition also specifies that the rate is equivalent to at least the amount for specialty care transport, as used in Medicare guidelines. The proposed change in definition would result in the critical care rate being less than the ALS and BLS Base rate. Having the critical care reimbursement rate lower than ALS or BLS makes no sense. The result would be weakening the entire EMS system by creating a negative fiscal impact on ground ambulance providers.

### **R9-25-908 (C)(5) Ambulance Staffing**

This proposed Rule requires CON holders to staff ground ambulances providing critical care services with a paramedic (with an additional endorsement in critical care services) or a registered nurse (RN). To our knowledge, no such endorsement is available in critical care services, so all ground ambulances would be required to have an RN staffing them if they

provide critical care services. Establishing such a requirement is unnecessary and exacerbates the nursing shortage currently facing Arizona and the nation.

### **R-25-908(E)(1) Dispatch and Scheduling**

This subsection requires that a CON holder contract for dispatch services rather than provide their own dispatch. This would be an increased cost for those services that currently provide their own dispatch services and would decrease their control over this critical process, all with no added benefit to the patient.

## **Article 10**

### **R9-25-1005 (E)(5) Minimum Standards for Ground Ambulance Vehicles**

The proposed Rule seeks to conform the Rule to A.R.S. § 36-2232 (C)(5), which requires a ground ambulance to install a GPS monitoring device to be used for response time measurement. The statute exempts this mandate if an ambulance service can “reasonably demonstrate it is unable to meet the requirement.” This makes sense as there are parts of the state where GPS access is nonexistent. The plain reading of the authorizing statute does not require an ambulance service to install a GPS monitoring device at a future date if they have been granted an exemption by ADHS. It is with this understanding that we believe the requirements in R9-25-1005 (E)(5) to submit “the date by which the applicant or certificate holder will equip the vehicle in subsection (E)(3) with a global monitoring device” to be problematic and inconsistent with statute. The intent of Laws 2022, Chapter 381 (HB 2609) was to allow rural providers to be exempted from the GPS mandate, so seeking future information goes beyond what is explicitly authorized in statute and could lead to the loss of some rural providers who are unable to comply with the mandate.

This comment was deleted as the waiver language now states that it is an annual waiver.

## **Article 11**

### **R9-25-1102 Application for Adjustment of General Public Rates and R9-25-1102 Application for Adjustment of General Public Rates**

The proposed Rule outlines the process for multiple ambulance services providing service in the same area or who have overlapping CONs to obtain uniform general public rates in accordance with A.R.S. § 36-2232 (E). It is concerning that the proposed rules are silent about what happens if ambulance service is granted authority to operate in an area with uniform general public rates. The new provider does not apply for said rates. This would mean that the rates are no longer uniform, and it is problematic to have ambulance providers servicing the same area under a different rate structure. Further exacerbating this issue is the proposed language of R9-25-1102 (D), which establishes a process for an ambulance service provider operating under uniform general public rates to obtain different general public rates. This pathway to changing rates

undermines the entire uniform general public rate process by rendering established uniform general public rates no longer uniform.

If this Rule stands and there is no longer a “uniform rate,” than those providers who were once under the “uniform rate” should be able to opt out without applying to amend their rates once it is no longer uniform because a different rate was given to a provider in the same geographic area.

### **R9-25-1106 Rate of Return Setting Considerations and R9-25-1108 Implementation of Rates and Charges**

R9-25-1106 (C) currently requires the ADHS Director to establish rates to provide for a rate of return that is at least 7% of gross revenue unless the applicant requests a lower rate. But the proposed rule change caps the rate of return at 7%, which is problematic and without statutory authority. The proposed change implies that a rate of return above 7% is not appropriate, and under R9-25-1108 and A.R.S. § 36-2232 (A)(1), the Department can unilaterally change a provider’s rate of return. Putting an artificial cap on rates of return is a troubling policy that can lead to provider rate cuts. Although we have never seen a provider request more than 7%, all parties should tread lightly regarding government intervention regarding private businesses’ financial health. If we learned anything from COVID and the aftermath it has had on the ability to find a workforce and the cost of equipment and supplies due to inflation, we need the flexibility to address issues that arise.

We, the undersigned providers, thank you for your consideration of our highlighted concerns and look forward to continuing to work with ADHS, the EMS Bureau, and the Office of Administrative Counsel to ensure that the current rules package is a sound policy that benefits the citizens of Arizona as well as the regulated community.

We would like to meet with you or your designated staffer to discuss these issues further. Please contact Meghaen Dell’Artino for more information or to coordinate a meeting between your office and the undersigned.

Thank you,

Tim Hawman  
Holbrock EMS

Glenn Kasprzyk; President SW Region  
GMR

Jim Broome; CEO  
Healthcare Innovation

Joshua Steward, Vice President  
Action Medical

Keith Spangler; Fire Chief  
Benson Fire Dept.

Mo Shelden; CEO  
Northern Cochise Community Hospital

Dale Hadfield; Chief  
Willcox PD/FD

John Moran; Chief  
Mescal Fire Dept.

Marty Minnick; Chief  
Bowie Fire Dept.

Julia Strange; CEO  
Benson Hospital

Neal Thomas; Regional Director  
ABC Ambulance

Gail Nelson; Manager  
White Mountain Ambulance Service, Inc.

Mark Savage; Fire Chief  
Fry Fire Dept.

Sam Foster; Fire Chief  
Whetstone Fire Dept.

Danny Farmer; Chief  
Pomerene Fire Dept.

CC: Stacie Gravito  
Arizona Department of Health Services, Office Chief



Ruthann Smejkal &lt;ruthann.smejkal@azdhs.gov&gt;

## Fwd: Chapter 9 Rule Changes

1 message

**Rachel Zenuk Garcia** <rachel.garcia@azdhs.gov>

Wed, Oct 11, 2023 at 7:44 PM

To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>, Stacie Gravito <stacie.gravito@azdhs.gov>

----- Forwarded message -----

From: **Brian Keeley** <bkeeley@nwfdaz.gov>

Date: Wed, Oct 11, 2023 at 4:01 PM

Subject: Chapter 9 Rule Changes

To: rachel.garcia@azdhs.gov <rachel.garcia@azdhs.gov>

Rachel,

I forwarded the following request to Taylor Pike and asked her to forward it to the rules committee, but I wanted to make sure you received it also. I have mentioned the following concern during the open comment period and in person with DHS staff during some of our meetings. Will you please consider changing the language of this particular part of the rules to ensure fairness and equity.

"Standby waiting rate" means the monetary amount assessed to set by the Department for a certificate holder to bill a patient by a certificate holder when aground ambulance vehicle is required to wait in excess of 15 minutes to load or unload the patient, unless the excess delay is caused by the ground ambulance vehicle or the ambulance attendants on the ground ambulance vehicle.

My concern is why should a patient be billed if the patient isn't at fault. In other words, if a hospital takes 2 hours to accept a patient, then the hospital should be charged the standby rate and not the patient. My proposed wording, I have offered in the past was "the party responsible for the delay".

Thank you for considering this change and please let me know if you have any questions or concerns.

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### BRIAN KEELEY

*Deputy Chief - Preparedness*



**DIRECT** 520-887-1010 Ext. 2801

**MOBILE** 520-403-2806

[bkeeley@nwfdaz.gov](mailto:bkeeley@nwfdaz.gov)

**NORTHWEST FIRE DISTRICT**

13535 N. Marana Main Street

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[www.nwfdaz.gov](http://www.nwfdaz.gov)

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Ruthann Smejkal &lt;ruthann.smejkal@azdhs.gov&gt;

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**Re: Article 9 Comments**

1 message

**Rachel Zenuk Garcia** <rachel.garcia@azdhs.gov>

Thu, Oct 12, 2023 at 9:07 AM

To: Dan Jarrett &lt;dan.jarrett@dmfd.org&gt;

Cc: Brian Tobin &lt;Brian.Tobin@dmfd.org&gt;, Stacie Gravito &lt;stacie.gravito@azdhs.gov&gt;, Ruthann Smejkal &lt;ruthann.smejkal@azdhs.gov&gt;

Received, thank you!

**Rachel Zenuk Garcia, MPH, MCHES**

Deputy Assistant Director

Bureau Chief, EMS and Trauma System

Arizona Department of Health Services

[150 North 18th Avenue, Suite 150, Phoenix, AZ 85007](#)

Main 602-364-3150

Direct 480-493-9651

Fax 602-364-3567

Email [Rachel.Garcia@azdhs.gov](mailto:Rachel.Garcia@azdhs.gov)*Health and Wellness for all Arizonans*

On Thu, Oct 12, 2023 at 8:14 AM Dan Jarrett &lt;dan.jarrett@dmfd.org&gt; wrote:

Chief Garcia,

Thank you for this ongoing opportunity to provide input into the Article 9 Rulemaking. I present the comments below for your consideration of issues that we still see in the draft rules update on behalf of Daisy Mountain Fire & Medical (DMFM) CON 105.

- 1. Interfacility response times:** As a CON holder who provides interfacility transports, DMFM entered into a service agreement with our hospital partner, which was ultimately reviewed and approved by DHS. Within this service agreement are negotiated and agreed upon response times when requested to transport urgent or non-urgent patients. Our agreement also defines what constitutes an urgent patient or a non-urgent patient, and has separate response times for either situation. These response times were developed in consideration of this specific Hospital's needs as well as the specific CON response area, travel distance and service capabilities of DMFM. Since both parties have negotiated these response times in good faith, come to an agreement in writing, and had the agreement reviewed and approved by DHS prior to implementation, it is the opinion of DMFM that separate generic interfacility response times in Article 9 are not necessary, or at the very least should identify and default to response times listed in a service agreement when such an agreement exists.
- 2. Interfacility response ETA:** It is the opinion of DMFM that the requirement to inform the hospital of an ETA on every IF transport is overly burdensome and not necessary. DMFM utilizes a 3<sup>rd</sup> party for dispatch services, and facilitating an ETA at the time of the phone call requesting transport may be difficult for the dispatch center whose primary mission is 911. Additionally, DMFM's ETA may not immediately be known depending on resource availability, and it would be burdensome to request dispatch to call the facility back with an ETA for every "non-emergency transport" again when they are handling 911 traffic. Thus, the ETA notification would fall on the responding ambulance crew. In our situation, depending on the floor/unit that is requesting transport, the call to DMFM dispatch can come from multiple locations within the hospital, such as from the transfer center or directly from the ED etc. This could require multiple calls to locate the correct unit that requested transport by our crew that is responding, which takes away from preparation for the transport and is in general unnecessary communication. As an alternative, DMFM suggests that ETA notification could be a provision within Interfacility service agreements that is negotiated between both parties, where a notification to the hospital should be made

if the ETA is beyond a certain time. For example, DMFM and our hospital partner may agree that if our ETA is going to be longer than 20 minutes, DMFM would notify the hospital of our extended ETA, however if our ETA is less than 20 minutes then no ETA notification is necessary. As with the comment made in item 1 above, the terms of a service agreement should take priority over generic article 9 rules since the interaction is between those specific hospital and ambulance providers only.

3. **Back-Up Agreements:** DMFM believes there should be more clarity in what is allowed in an Ambulance Back-Up Agreements. We would like to see the ability for regional back-up agreements, meaning if certain ambulance providers within an area all agree to be back-up providers to each other under the same terms, then one agreement could be entered into amongst those providers. DMFM believes that these agreements should allow for automatic dispatching when certain agreed upon conditions are met. For example, DMFM might agree to automatically send an ambulance to a neighboring CON area when requested for 911 if DMFM would still have at least one other ambulance available in DMFM's service area. Hypothetically, neighboring CON holders might agree to the same terms. By predetermining these conditions, this would allow for an automatic approval of an ambulance provider to send an ambulance when requested rather than having to be approved at that time. Ultimately, allowing the closest most appropriate resource to respond in the most efficient way possible is best for patient care. Perhaps the rules already allow for such agreements to be made, however it is DMFM's position that the process around developing backup agreements, the definition of a backup agreement, what is or is not allowed to be in a backup agreement, who can enter into them etc. is not clearly laid out in rule or in guidance at this time.

4. **Healthcare Institution Definition:** The proposed rules list definitions for "Interfacility Transport" and "Convalescent Transport" with the difference being one going to a "Healthcare Institution" and the other is not. DMFM believes the definitions section should include what constitutes a healthcare institution, even if that definition is intentionally broad or all encompassing. Being able to point to a definition of a healthcare institution in rule could potentially help an ambulance provider justify their decision to transport to a certain location or facility, whether it be a legal justification, a reimbursement justification, or a regulatory justification.

Again I appreciate the opportunity to submit comments and contribute to the rulemaking process, and I will continue to stay informed as things progress.

Regards,

**Dan Jarrett**

Assistant Chief

Medical Services & Emergency Transportation

Daisy Mountain Fire & Medical

Office: 623-465-7400 x114

Cell: 602-329-3771



We want to hear from you! Complete our patient survey here: <https://www.surveymonkey.com/r/DMFM-EMS>

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This comment is in regards to the proposed rule in R9-25-908(K)(2)(c) and the requirement that the administrative medical director be on a committee reviewing the data every quarter with a CON holder. There is potentially a significant amount of data that might be involved in this process required in (K)(2)(b) along with action planning, monitoring, and follow-up for cases that are not in compliance. ALS Base Hospitals provide a significant amount of the EMS administrative medical direction in Arizona. We currently have 17 contracts to provided medical direction for EMS agencies, of which 8 of those are CON holders. As an ALS Base Hospital, we are paying a significant amount of money for an administrative medical director, in order to meet the requirement of R9-25-201, along with part of those requirements also being delegated to 2 paramedics, as defined in R9-25-201(G).

In our case that means the administrative medical director will have to participate in 8 meetings a quarter. This is going to require a significant amount of time that we cannot cover in the current amount of hours that we contract for, to meet requirements in R9-25-201. Administrative medical directors are expensive and this is going to increase the cost to this ALS Base Hospital significantly to meet these requirements. There is nothing in the preliminary summary of the EIS, in the proposed rule, that identifies this impact on ALS Base Hospitals.

The administrative medical director should be removed as a requirement on this committee. The Department has required out of compliance reporting in other areas of the document and can require an action plan for which the Department can monitor. I do not believe the rule has adequately identified the economic impact on ALS Base Hospitals.

I have rearranged the rule to show the order that follow from the committee. There are already QI processes required in R9-25-201 that applies to all agencies we provide medical direction for. This allows us to monitor our whole system. The new requirement is overly restrictive.

*(K)(2)(C) A committee of the administrative medical director, the individual managing the ground ambulance service or designee, and other employees as appropriate:*

*i. Review the data in subsection (K)(2)(a) and any issues identified in (K)(2)(b) on at least a quarterly basis, and:*

*(K)(2)(a) Data related to initial patient assessment, patient care, transport services provided and patient status upon arrival at the destination are:*

*(K)(2)(b) Continuous QI processes are developed and implemented to identify, document, and evaluate issues related to the provision of services to ensure quality patient care, including;*

*i. Care provided to patients with time-critical conditions, including deviations from national treatment standards for a patient with a time-critical condition;*

*ii. Transport, including an interfacility transport of a patient that does not have a time-critical condition;*

*iii. Documentation; and*

*iv. Patient status upon arrival at the destination*

*ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified;*

One CON holder I have consulted with has anticipated 2 hours for each meeting at approximately \$250/hr. That agency has over 10,000 calls per year. After more thought I believe that is a very conservative estimate, for what is described above, but if true for the 8 CON holders based here, would create an extra \$16,000 in expense each year to the base hospital. I believe the 2 hours may be conservative even for our smallest CON holder.

Thank you for taking the time to review my comments.



Ruthann Smejkal &lt;ruthann.smejkal@azdhs.gov&gt;

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**Fwd: 9 A.A.C. 25 Article 9 comment**

1 message

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**Rachel Zenuk Garcia** <rachel.garcia@azdhs.gov>  
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>

Wed, Oct 11, 2023 at 7:41 PM

----- Forwarded message -----

From: **Brian D. Smith** <[Brian.Smith@nahealth.com](mailto:Brian.Smith@nahealth.com)>

Date: Wed, Oct 4, 2023 at 9:20 AM

Subject: 9 A.A.C. 25 Article 9 comment

To: Rachel Zenuk Garcia <[rachel.garcia@azdhs.gov](mailto:rachel.garcia@azdhs.gov)>, [stacie.gravito@azdhs.gov](mailto:stacie.gravito@azdhs.gov) <[stacie.gravito@azdhs.gov](mailto:stacie.gravito@azdhs.gov)>

Chiefs Garcia and Gravito,

Please see my attached comment on the current proposed revisions of ground ambulance rules.

Thank your for your consideration on my comments.

Best Regards,

*Brian*

Brian Smith, Paramedic

Prehospital Care Program Coordinator

Prehospital Care Dept.

Flagstaff Medical Center

P- (928)773-2316

F- (928)773-2461

[brian.smith@nahealth.com](mailto:brian.smith@nahealth.com)

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**9AAC25Article9Comment.docx**

14K

Eugene,

Thank you for meeting with us the other day to hear our concerns with the ground ambulance rules that are currently being worked on by your people. In the notice of proposed rulemaking, some of the rules we had issues with were amended, but some issues remain unresolved. As state, here are the areas of concern that remain outstanding:

- R9-25-901 – the definition of “scene locality” remains unchanged. Per our meeting you were going to look into this issue and see if this issue could be addressed. We are still unsure what the Department’s rationale is for changing this definition from what is currently used and understood by the industry.
- Interfacility Transports (IFTs) (R9-25-902,905,906 and 908) – In the latest draft the 90% and 100% response time requirements have been removed and that is much appreciated, but there are some significant outstanding issues. The rules still contain a multitude of new requirements regarding IFTs which need to be thoroughly discussed with all stakeholders as well as authorized by the Legislature. Continuing with these new requirements at the current pace this rules set is moving could have many unanticipated consequences for providers. One salient example showing more discussion is needed is the proposed mandate in R9-25-908 (E)(3)(c) which requires ambulance provider IFTs for patients without a time-critical condition to be within 60 minutes of the estimated time. The 60-minute timeframe has changed multiple times during the drafting process which shows that thoughtful discussion should be had on the issue.
- There have been no changes to the following:
  - Definition of “critical care rate” in R9-25-901.
  - Staffing requirements in R9-25-908 (C)(5) for ambulances providing critical care services. Specifically, the endorsement requirement for providers when ADHS has yet to create such an endorsement is very problematic and will create additional staffing issues for providers.
  - Dispatch and Scheduling requirements in R9-25-908 (E)(1) will be an additional financial burden to the industry with no tangible benefit to the state.
  - Requirements for Uniform Rates in R9-25-1102. The process outlined in this section will create rates that are no longer uniform and should contain an opt out provision for providers.
  - Rate of Return provisions in R9-25-1106 (C) remain mostly unchanged. The proposed rule caps a provider’s rate of return at 7% unless the provider gives sufficient justification for a higher rate of return. We continue to hold the view that ADHS does not have the statutory authority for this change and it is not the state’s role to interfere with the financial health of a private industry. Lastly, asking for a “sufficient” justification is very vague and will lead to unelected bureaucrats making financial decisions for a private business.
  - Provisions in R9-25-1108 (B) which allows ADHS to periodically review and, if appropriate, adjust rates and charges for a ground ambulance service to ensure that the rates and charges are just, reasonable and sufficient. This new provision lacks clear statutory authority to implement such a process. Although A.R.S. § 36-

2232 (A)(1) grants ADHS the ability to “determine, fix, alter and regulate just, reasonable and sufficient rates for the provision of ambulances”, any changes in rates are typically done through the amendment process, rather than through agency fiat. Nowhere in statute does it say that ADHS can periodically review rates and adjust them accordingly. Additionally, although A.R.S. § 36-2232 (A)(4), as amended by HB 2609, requires ADHS to update response times based on at a minimum population density and geographic and medical considerations and the financial impact on rates every six years with an additional review if requested by outlined partners, nowhere is authority granted to ADHS to independently initiate a review and adjustment of rates and charges. This is concerning because if you comport this language with R9-25-1106 (C) it would mean that ADHS could decide that if you have a rate of return higher than 7% to reduce a provider’s rates to below the 7% threshold.

- GPS waiver requirements in R9-25-1102 still lacks clarity around the process. In recent drafts, the Department has changed the waiver process into an annual process, but it still lacks detail around denials and appeals. We would like to suggest you mirror the opioid reporting waiver process that is found in the Board of Pharmacy rules. R4-23-502 (D) of the Pharmacy Board rules states “A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the Board established format may request a waiver from electronic reporting by submitting a written request to the Board or its designee. The Board or its designee shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form supplied by the Board or its designee.” Mirroring this language will provide assurances to the providers that their exemption will be granted while still giving the Department the ability to require an attestation of compliance with the rules. This proposal will satisfy the requirements of HB 2609 and will be easily understood by the regulated community.

The last pressing issue that needs to be addressed is the timing of the rulemaking process. Stakeholders have been working on these rules for many years and we are committed to continue to do so. It is important to prioritize the multitude of issues that surround the ambulance industry. The first- and most-time sensitive issue that must be addressed are the rule changes that must occur to be ready for the January 1, 2024, effective date of HB 2609 from the 2022 legislative session. We respectfully request that the proposed rules be bifurcated so that all rules that are specifically needed to implement HB 2609 can move forward to meet the effective date of the bill. Any other issues such as IFTs, staffing requirements etc. should be handled in a regular rulemaking process that is not on an accelerated time frame so that all parties can come to a consensus on any new rules. Any rules being proposed that are not required by HB 2609 do not fall under the exempt rulemaking authority granted by the bill and cannot be quickly changed if problems arise with implementation. It has been stated in many meetings that the Department has exempt rulemaking for 12 months after the rules go into effect because of HB 2609 so changes can be quickly made if issues arise. The exempt rulemaking is for “the purposes of this act” and any changes outside of HB 2609 requirements would violate state law. It is for these reasons that we urge you to split the rule set and continue to work with stakeholders to come to an equitable solution.

Thanks,



Ruthann Smejkal &lt;ruthann.smejkal@azdhs.gov&gt;

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**Fwd: Comments on ADHS Ground Ambulance NPR**

1 message

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**Stacie Gravito** <stacie.gravito@azdhs.gov>  
To: Ruthann Smejkal <ruthann.smejkal@azdhs.gov>  
Cc: Siman Qaasim <siman.qaasim@azdhs.gov>

Tue, Oct 3, 2023 at 11:23 AM

FYI

----- Forwarded message -----

From: **Rick Hazelton** <rick@p3gr.com>  
Date: Tue, Oct 3, 2023 at 11:16 AM  
Subject: Comments on ADHS Ground Ambulance NPR  
To: [rachel.garcia@azdhs.gov](mailto:rachel.garcia@azdhs.gov) <[rachel.garcia@azdhs.gov](mailto:rachel.garcia@azdhs.gov)>, [stacie.gravito@azdhs.gov](mailto:stacie.gravito@azdhs.gov) <[stacie.gravito@azdhs.gov](mailto:stacie.gravito@azdhs.gov)>  
Cc: [eugene.livar@azdhs.gov](mailto:eugene.livar@azdhs.gov) <[eugene.livar@azdhs.gov](mailto:eugene.livar@azdhs.gov)>, Meghaen Dell'Artino <[meghaen@p3gr.com](mailto:meghaen@p3gr.com)>

Stacie and Rachel,

Attached to this message are outstanding concerns that we have with the rules as they stand today (10/3/23). Please submit the attached document to ACR so that it is considered "public comment".

Please let me know if you have any questions. Thank you for your attention to this matter.

Thanks,

Rick Hazelton

322 W Roosevelt St  
Phoenix, AZ 85003  
Office: 602-441-5761  
Cell: 623-687-7427  
Email: [rick@p3gr.com](mailto:rick@p3gr.com)

--

**Stacie C. Gravito**she/her/hers ([what's this?](#))*Office Chief || Administrative Counsel || HIPAA Privacy Officer*

Administrative Counsel and Rules

Policy and Intergovernmental Affairs

Arizona Department of Health Services

[150 N. 18th Ave., Suite 200, Phoenix, AZ 85007](#)

Direct: 602.542.5879

Mobile: 602.509.3315

Fax: 602.364.1150

Email: [Stacie.Gravito@azdhs.gov](mailto:Stacie.Gravito@azdhs.gov)*Health and Wellness for Arizonans*

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**3 attachments**



PUBLIC POLICY PARTNERS

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22K



PUBLIC POLICY PARTNERS

**a89674c0-b1a1-454f-863a-d25bdfb2ee35.png**  
22K



**Eugene ambo email 9-26-23.pdf**  
55K

Fri, Oct 13, 12:37 PM (4 days ago)

**Rachel Zenuk Garcia**

to Thomas, Chris, Stacie, me

Received, thank you!

**Rachel Zenuk Garcia, MPH, MCHES**

Deputy Assistant Director

Bureau Chief, EMS and Trauma System

Arizona Department of Health Services

150 North 18th Avenue, Suite 150, Phoenix, AZ 85007

Main 602-364-3150

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Email [Rachel.Garcia@azdhs.gov](mailto:Rachel.Garcia@azdhs.gov)

*Health and Wellness for all Arizonans*

On Fri, Oct 13, 2023 at 11:52 AM Brandhuber, Thomas <[tbrandhuber@grfdaz.gov](mailto:tbrandhuber@grfdaz.gov)> wrote:

Rachel,

Plz see below for the concerns of Golder Ranch Fire District, CON 56:

HB 2609 items that still need to be addressed are:

- The waiver process for G.P.S. We are asking for specific language on what type of agencies would qualify for this waiver and the duration of the waiver. Will it be based on limitations for connectivity or financial burdens for smaller agencies? Why the need for an annual renewal of the waiver? We are asking for precise definitions of the waiver and the process of granting and renewal.
- Clarification that HB 2609 is limited to **initial** and **amended** Certificate of Necessity' as written: *Sec. 11. Applicability This act applies to initial and amended certificates of necessity filed with the Department of Health Services pursuant to section 36-2233, Arizona Revised Statutes, as amended by this act, from and after December 31, 2023.*
- Clarification of what an amended Certificate of Necessity is.
  - Would this include simple administrative changes such as a change of address, change of station location, or change of statutory agent or individual responsible for managing the ground ambulance service within an organization due to retirement or promotion?

- Would this include changing from charging for supplies to bundling the costs of supplies into the base rate or rate adjustments requested?
  - Would this include the renewal and annual rate increase adoption?
- If the above are construed as an amended Certificate of Necessity, that would create a bifurcated regulatory scheme where only part of the ground ambulance transport market is subject to increased reporting and other requirements of HB 2609. Everyone should be subject to the statute and related regulations.
- The exempt rulemaking for a period of twelve months, starting January 01, 2024, is explicitly for changes in HB 2609. There is an effort to conflate the implementation of House Bill 2609 with rule modifications in Articles 9, 10, 11, and 12, which needs to be clarified and resolved. This was an arbitrary decision made by ADHS BEMSTS that does not align with Arizona Revised Statutes or the directives of the Arizona Legislature. While most of the issues this group has with the rulemaking are focused on Article 9, some fiscal matters contained in Articles 10 and 11 changes should also be scrutinized to ensure that they do not result in increased costs being unnecessarily passed on to consumers. Otherwise, Articles 10, 11, and 12 are much less controversial among the ground ambulance transport constituents.

## Rule 9

- R9-25-901 (7) Definition of “Back-up-agreement” Needs to be less restrictive. These are voluntary agreements that CON holders agree to follow. It is not truly only based on “temporarily not able to provide needed services.” It’s about what is best for the patient and reducing longer response times. The language should incorporate what is in R9-25-908 (F) (1).
- R9-25-901 (17) Definition of “critical care rate” needs to be rewritten as “greater than the A.L.S. rate,” and the proposed language referencing “equivalent to federal Medicare guidelines” needs to be removed. This limits the reimbursement for critical care transport that has a higher operational cost and higher liability for providing critical care services. A charge for a critical care rate, also known as a specialty care transport, should never be at a rate less than the A.L.S. rate set by ADHS BEMSTS.
- R9-25-901 (23) General Public Rate. Needs to say, “bill a patient or responsible party”, this ties into the standby rate issue of billing a patient because a hospital or other healthcare facility is responsible for the standby time.
- R9-25-901 (24) General Accepted Accounting Principles. Add Governmental Accounting Standards Board as in R9-25-901 (21)
- R9-25-901 (39) The definition of “scene locality”: We are still unsure what the Department’s rationale is for changing this definition from what the industry currently uses and understands. The Census Bureau does not utilize suburban and wilderness,

yet the Bureau's definitions refer to Census Bureau data for determining suburban and wilderness.

- R9-25-901 (42) Standby Waiting Rate. Add or responsible party after “to bill a patient” ties into R9-25-901 (23)
- R9-25-904—Transfer of a Certificate of Necessity. The breadth of this language exceeds the call of HB 2609 and given its vagaries, could subject CON holders to recurring regulatory processes (for example, the change in a fire chief could be grounds for the Bureau to suggest that the CON has been transferred and require that entity to proceed back through the CON licensure process). The addition of language that prohibits overlapping CON holders from executing backup agreements that are not solely short-term arrangements is also problematic. In a health and safety environment, having backup among existing CON holders serves the public good and should not result in more arduous and duplicative regulatory processes.
- R9-25-904 Transfer of a Certificate of Necessity (B) (1) is this provision concerning changes in who “manages day-to-day operations” only when there is a Transfer of Certificate of Necessity?
- R9-25-905 (6) (a) Application for Amendment of Certificate of Necessity. Does annexation of new are into a municipal entity require an application for an amended CON?
- R9-25-905 (10) (a) Application for Amendment of Certificate of Necessity. Does changing how supplies are billed for require and application for an amended CON?
- R9-25-906—Determining Public Necessity. This provision of the regulations changes the inquiry and determination about public necessity. Since that is the critical factor in determining whether a CON is granted, this language should be given significantly more review, analysis, and dialogue among the stakeholders.
- R9-25-906 (B) (11) what is 90 percent of?
- R9-25-902,905,906 and 908 Interfacility Transports (I.F.T.s) –The rules still contain many new requirements regarding I.F.T.s, which must be thoroughly discussed with all stakeholders and authorized by the Legislature. Continuing with these new requirements at the current pace, this rules set is moving could have many unanticipated consequences for providers. One salient example showing more

discussion is needed is the proposed mandate in R9-25-908 (E)(3)(c), which requires ambulance provider I.F.T.s for patients without a time-critical condition to be within 60 minutes of the estimated time. The 60-minute timeframe has changed multiple times during the drafting process, which shows that thoughtful discussion should be had on the issue. At one of the last stakeholders' discussions, the Hospital group admitted they had no data recorded to present reference to their complaints of long wait times for IFTS. They commented that it was too cumbersome to document these instances. In an in-person meeting with AZDHS, a table was presented showing historical response times for IFTS now that data is being ignored and arbitrary response times and directives are being mandated.

- R9-25-908 (E)(3)(b)(iii) Considerations need to include “consideration of the 911 emergency resources of a sole provider CON” because this assessment is always performed when considering an I.F.T.
  
- R9-25-907 Determining Response Times D.H.S. has changed its position multiple times depending on what it intends to do with response times. Recently, D.H.S. has stated they plan to use their standard response times for quality assurance/data collection or something like that, but it is still being determined what that means. They also have said they will make a report available for the annual reporting of response times requirement, but again, what this will entail has yet to be clarified by D.H.S. Does the annual reporting of response times apply to all CONs or just new/amended?
  
- R9-25-908 (9) (b) “Considering the response time for 90 percent of the runs.” 90 percent of what?
  
- R9-25-908 (C)(5)(b) Staffing requirements for ambulances providing critical care services. Specifically, the endorsement requirement for providers when ADHS has yet to create such an endorsement is problematic and will create additional staffing issues for providers.
  
- R9-25-908 (E) The amendments impose unfair scrutiny on CON holders who opt to contract with external dispatch services. While these provisions outline detailed requirements for such contracts, no corresponding mandates exist for CON holders who manage their internal dispatch operations. This glaring inconsistency penalizes those seeking external partnerships and creates an environment where internal operations remain unchecked. Additionally, there should not be a limitation on only CONs that overlap. Not consistent with R9-25-908 (F) (1)
  
- R9-25-909 (A) (8)(a) and (iii) and (B) (2) and (b) The number 2080 is utilized as a divisor. Firefighters who work for a governmental entity under the Fair Labor Standards Act §207(k) exemption should have 2990 as the divisor. Keep 2080 for non-government agencies but follow the Fair Labor Standards Act law and utilize 2990 for the divisor for Agencies with Government Fire Fighters.

- R9-25-909 (C) (3) (a) (viii) Add Standby as a possible category for revenue.
- R9-25-909 (C) (22 and 24) the term equity is not utilized for governmental entities utilizing Government Accounting Standards Board (GASB), should say equity or fund balance.

## Rule 11

- R9-25-1102 Requirements for Uniform Rates in the process outlined in this section will no longer create uniform rates and should contain an opt-out provision for providers.

R9-25-1106 (C). The proposed rule caps a provider's rate of return at 7% unless the provider gives sufficient justification for a higher rate of return. ADHS BEMSTS does not have the statutory authority for this change, and it is not the State's role to interfere with the financial health of a CON holder. Lastly, asking for a "sufficient" justification is vague and will lead to unelected bureaucrats making financial decisions for a CON holder.

- R9-25-1106 Rate of Return Considerations (A) (B) (C) (D) there are many instances where terms such as "losses, revenue, rate of return, etc.." that do not conform to GASB standards. As written, it is for profit entities. Sometime needs to be spent on modifying or adding language so that it aligns with both private and government accounting practices.
- R9-25-1108 (B) Provisions allow ADHS BEMSTS to review periodically and, if appropriate, adjust rates and charges for a ground ambulance service to ensure that the rates and charges are just, reasonable, and sufficient. This new provision lacks apparent statutory authority to implement such a process. Although A.R.S. § 36-2232 (A)(1) grants ADHS the ability to "determine, fix, alter and regulate just, reasonable and sufficient rates for the provision of ambulances," any changes in rates are typically done through the amendment process, rather than through agency fiat. The statute does not say that ADHS can periodically review rates and adjust them accordingly. Additionally, although A.R.S. § 36-2232 (A)(4), as amended by HB 2609, requires ADHS BEMSTS to update response times based on a minimum population density and geographic and medical considerations and the financial impact on rates every six years with an additional review if requested by outlined

partners, nowhere is authority granted to ADHS BEMSTS to initiate a review and adjustment of rates and charges independently. This is concerning because if you compare this language with R9-25-1106 (C), it will mean that ADHS BEMSTS could decide if you have a rate of return higher than 7% to reduce a provider's rates to below the 7% threshold.

Article 9 requires significantly more stakeholder involvement and input. Article 9 is only ready to move forward for requirements called explicitly for by HB 2609.

Articles 9 and 11 Governmental agencies follow the GASB; there are multiple examples of financial language/definitions that Governmental entities don't utilize.

Thanks

Tom

F/C

## **Tom Brandhuber**

Fire Chief

Golder Ranch Fire District

Community First

“Proudly serving the communities of Oro Valley,

Marana,

Catalina and Saddlebrooke”

**P:** 520-825-9001 | **M:** 520-237-6030

**E:** [tbrandhuber@grfdaz.gov](mailto:tbrandhuber@grfdaz.gov)

**A:** [3885 E. Golder Ranch Drive, Tucson AZ 85739](#)

**W:** [www.grfdaz.gov](http://www.grfdaz.gov)

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October 13, 2023

Rachel Garcia  
Bureau Chief  
Bureau of Emergency Medical Services and Trauma System  
150 N. 18th Ave., Suite 540  
Phoenix, AZ 85007-3248

Dear Rachel:

The Arizona Ambulance Association, Arizona Fire Districts Association, and the Arizona Fire Chiefs Association are preparing the following joint statement of some common points related to the rule process. We appreciate the collaboration and work put into implementing House Bill 2609 and the proposed rule changes to Article 9, 10, 11, 12, but we do have areas of concern that remain core issues with Certificate of Necessity holders throughout the State.

January 01, 2024, is the goal date for House Bill 2609, an act filed as Chapter 381. Concerning HB 2609, the items that still need to be addressed are:

- The waiver process for G.P.S. We are asking for specific language on what type of agencies would qualify for this waiver and the duration of the waiver. Will it be based on limitations for connectivity or financial burdens for smaller agencies? Why the need for an annual renewal of the waiver? We are asking for precise definitions of the waiver and the process of granting and renewal.
- Clarification that HB 2609 is limited to **initial** and **amended** Certificate of Necessity' as written: *Sec. 11. Applicability This act applies to initial and amended certificates of necessity filed with the Department of Health Services pursuant to section 36-2233, Arizona Revised Statutes, as amended by this act, from and after December 31, 2023.*
- Clarification of what an amended Certificate of Necessity is.
  - Would this include simple administrative changes such as a change of address, change of station location, or change of statutory agent or individual responsible for managing the ground ambulance service within an organization due to retirement or promotion?
  - Would this include changing from charging for supplies to bundling the costs of supplies into the base rate or rate adjustments requested?
  - Would this include the renewal and annual rate increase adoption?
- If the above are construed as an amended Certificate of Necessity, that would create a bifurcated regulatory scheme where only part of the ground ambulance transport market is subject to increased reporting and other requirements of HB 2609. Everyone should be subject to the statute and related regulations.
- The exempt rulemaking for a period of twelve months, starting January 01, 2024, is explicitly for changes in HB 2609. There is an effort to conflate the implementation of House Bill 2609 with rule modifications in Articles 9, 10, 11, and 12, which needs to be clarified and resolved. This was an arbitrary decision made by ADHS BEMSTS that does not align with Arizona Revised Statutes or the directives of the Arizona Legislature. While most of the issues this group has with the rulemaking are focused on Article 9, some fiscal matters contained in Articles 10 and 11 changes should also be scrutinized to

ensure that they do not result in increased costs being unnecessarily passed on to consumers. Otherwise, Articles 10, 11, and 12 are much less controversial among the ground ambulance transport constituents.

Regarding Articles 9, 10, 11, and 12, there is no official timeline for the changes to take effect that are not requirements of HB 2609. Many of the changes in these articles are positive and move the regulatory process forward. However, there are specific areas that we want to remove from the current drafts for further discussion. This way, the mandatory changes directed by HB 2609 and parts of Articles 9, 10, 11, and 12 can move forward. The items below can be addressed and implemented as consensus is reached, not on an artificial deadline.

The items are specified below:

- R9-25-901 (39) The definition of “scene locality”: We are still unsure what the Department’s rationale is for changing this definition from what the industry currently uses and understands. The Census Bureau does not utilize suburban and wilderness, yet the Bureau’s definitions refer to Census Bureau data for determining suburban and wilderness.
- R9-25-904—Transfer of a Certificate of Necessity. The breadth of this language exceeds the call of HB 2609 and given its vagaries, could subject CON holders to recurring regulatory processes (for example, the change in a fire chief could be grounds for the Bureau to suggest that the CON has been transferred and require that entity to proceed back through the CON licensure process). The addition of language that prohibits overlapping CON holders from executing backup agreements that are not solely short-term arrangements is also problematic. In a health and safety environment, having backup among existing CON holders serves the public good and should not result in more arduous and duplicative regulatory processes.
- R9-25-906—Determining Public Necessity. This provision of the regulations changes the inquiry and determination about public necessity. Since that is the critical factor in determining whether a CON is granted, this language should be given significantly more review, analysis, and dialogue among the stakeholders.
- R9-25-902,905,906 and 908 Interfacility Transports (I.F.T.s) –The rules still contain many new requirements regarding I.F.T.s, which must be thoroughly discussed with all stakeholders and authorized by the Legislature. Continuing with these new requirements at the current pace, this rules set is moving could have many unanticipated consequences for providers. One salient example showing more discussion is needed is the proposed mandate in R9-25-908 (E)(3)(c), which requires ambulance provider I.F.T.s for patients without a time-critical condition to be within 60 minutes of the estimated time. The 60-minute timeframe has changed multiple times during the drafting process, which shows that thoughtful discussion should be had on the issue. At one of the last stakeholders’ discussions, the Hospital group admitted they had no data recorded to present reference to their complaints of long wait times for IFTS. They commented that it was too cumbersome to document these instances. In an in-person meeting with AZDHS, a table

was presented showing historical response times for IFTS now that data is being ignored and arbitrary response times and directives are being mandated.

- R9-25-908 (E)(3)(b)(iii) Considerations need to include “consideration of the 911 emergency resources of a sole provider CON” because this assessment is always performed when considering an I.F.T.
  
- R9-25-901 (17) Definition of “critical care rate” needs to be rewritten as “greater than the A.L.S. rate,” and the proposed language referencing “equivalent to federal Medicare guidelines” needs to be removed. This limits the reimbursement for critical care transport that has a higher operational cost and higher liability for providing critical care services. A charge for a critical care rate, also known as a specialty care transport, should never be at a rate less than the A.L.S. rate set by ADHS BEMSTS.
  
- R9-25-907 Determining Response Times D.H.S. has changed its position multiple times depending on what it intends to do with response times. Recently, D.H.S. has stated they plan to use their standard response times for quality assurance/data collection or something like that, but it is still being determined what that means. They also have said they will make a report available for the annual reporting of response times requirement, but again, what this will entail has yet to be clarified by D.H.S. Does the annual reporting of response times apply to all CONs or just new/amended?
  
- R9-25-908 (C)(5)(b) Staffing requirements for ambulances providing critical care services. Specifically, the endorsement requirement for providers when ADHS has yet to create such an endorsement is problematic and will create additional staffing issues for providers.
  
- R9-25-908 (E) The amendments impose unfair scrutiny on CON holders who opt to contract with external dispatch services. While these provisions outline detailed requirements for such contracts, no corresponding mandates exist for CON holders who manage their internal dispatch operations. This glaring inconsistency penalizes those seeking external partnerships and creates an environment where internal operations remain unchecked.
  
- R9-25-909- (A) (8)(a) and (iii) and (B) (2) and (b) The number 2080 is utilized as a divisor. Firefighters who work for a governmental entity under the Fair Labor Standards Act §207(k) exemption should have 2990 as the divisor. Keep 2080 for non-government agencies but follow the Fair Labor Standards Act law and utilize 2990 for the divisor for Agencies with Government Fire Fighters.
  
- R9-25-1102 Requirements for Uniform Rates in the process outlined in this section will no longer create uniform rates and should contain an opt-out provision for providers.
  
- R9-25-1106 (C). The proposed rule caps a provider’s rate of return at 7% unless the provider gives sufficient justification for a higher rate of return. ADHS BEMSTS does not have the statutory authority for this change, and it is not the State’s role to interfere

with the financial health of a CON holder. Lastly, asking for a “sufficient” justification is vague and will lead to unelected bureaucrats making financial decisions for a CON holder.

- R9-25-1108 (B) Provisions allow ADHS BEMSTS to review periodically and, if appropriate, adjust rates and charges for a ground ambulance service to ensure that the rates and charges are just, reasonable, and sufficient. This new provision lacks apparent statutory authority to implement such a process. Although A.R.S. § 36-2232 (A)(1) grants ADHS the ability to “determine, fix, alter and regulate just, reasonable and sufficient rates for the provision of ambulances,” any changes in rates are typically done through the amendment process, rather than through agency fiat. The statute does not say that ADHS can periodically review rates and adjust them accordingly. Additionally, although A.R.S. § 36-2232 (A)(4), as amended by HB 2609, requires ADHS BEMSTS to update response times based on a minimum population density and geographic and medical considerations and the financial impact on rates every six years with an additional review if requested by outlined partners, nowhere is authority granted to ADHS BEMSTS to initiate a review and adjustment of rates and charges independently. This is concerning because if you compare this language with R9-25-1106 (C), it will mean that ADHS BEMSTS could decide if you have a rate of return higher than 7% to reduce a provider’s rates to below the 7% threshold.

The preceding hits on the issues are the most immediate concern; however, Article 9 requires significantly more stakeholder involvement and input. Article 9 is only ready to move forward for requirements called explicitly for by HB 2609.

Articles 10 and 11 could be massaged and put into place if some scrutiny about fiscal impacts, and financial reporting standards that meet government agencies requirements are made. Governmental agencies follow the Government Accounting Standards Board (GASB); there are multiple examples of financial language/definitions that Governmental entities don’t utilize. Additionally, mandating specific equipment on each ambulance should be reviewed to ensure it is the best use of resources in the ground ambulance space.

Again, we appreciate the collaborative and communicative environment that you brought to the Bureau of Emergency Medical Services and Trauma Systems. We look forward to continuing to work with you and the designated staff to ensure the rules package benefits the citizens of Arizona and the Certificate of Necessity Holders.

Respectfully,

*Patrick Moore*

Patrick Moore  
Arizona Fire District Association

*Tom Shannon*

Tom Shannon  
Arizona Fire Chiefs Association

*Tom Brandhuber*

Tom Brandhuber  
Arizona Ambulance Association





October 15, 2023

Rachel Garcia  
Bureau Chief, Bureau of Emergency medical Services and Trauma System  
Arizona Department of Health Services  
150 N. 18<sup>th</sup> Ave., Suite 200  
Phoenix, AZ 85007

Dear Ms. Garcia,

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NOPR) making changes to ground ambulance regulations. I am commenting on behalf of the Arizona Hospital and Healthcare Association (AzHHA). AzHHA is a statewide association of more than 80 hospital and affiliated health system members, representing short-term acute care, behavioral health, post-acute care, and critical access hospitals, as well as their affiliated clinics and staff. Our comments are focused on Article 9, relating to ground ambulance certificate of necessity (CON).

AzHHA greatly appreciates the outreach that the Arizona Department of Health Services (ADHS) has made to all stakeholders during the draft rulemaking process. We thank ADHS for taking the time to listen to our members' concerns, especially as they relate to extensive delays in interfacility arrival times. ADHS staff have taken extraordinary steps to weigh the perspectives of all parties, always with an eye to promoting patient-centered care.

As we have stated previously, the CON framework the State of Arizona uses to authorize ground ambulance service operations constitutes monopolies or near monopolies in all areas of the state. It is inexcusable that agencies granted this monopoly are permitted to "park" patients in an emergency department when those patients are in a medical crisis and require transportation to a higher level of care or specialty hospital. Several years ago, the Centers for Medicare & Medicaid Services informed hospitals that "parking" a patient in an ambulance is a potential violation of EMTALA. Ambulance companies who are granted the privilege of a CON should not be allowed to engage in a similar practice.

We acknowledge that CON holders, at times, will need to prioritize responses based on the clinical conditions of patients and limited resources. However, the persistent delays in interfacility transport in many areas of the state are unacceptable. Hospitals have recently reported the shortest arrival times for behavioral health patients needing admission to a level I

psychiatric hospital was 10-12 hours. Many wait times exceed 24 hours. In some areas of the state, actual transport routinely occurs more than 72 hours after the facility calls for it.

Unfortunately, under the existing ground ambulance rules, ADHS does not have a mechanism to capture interfacility transport data, evaluate CON holder performance, and hold CON holders accountable for non-compliance with appropriate, evidence-based, standards of care. **It is imperative that the CON process include these accountability measures in order to safeguard the public.**

We have had extensive conversations with our members about the proposed revisions to the rule. While a few members had previously expressed concern that some revisions might negatively impact current 911 service in their rural areas, the differentiation between urban, suburban, rural and wilderness scene locality addresses these concerns. Moreover, limiting the definition of “response time” for interfacility transports to just those conditions that are “time-critical,” which is narrowly defined under the rule, strikes a compromise for all parties.

AzHHA has previously advocated for more stringent oversight of interfacility transport during the draft rulemaking process. However, we are fully supportive of the framework ADHS has proposed in the revisions to Article 9 included in the NOPR. Without these changes, policymakers and the public will have no data on which to evaluate CON holder performance with respect to interfacility transport. **As such, AzHHA strongly recommends that ADHS finalize the revisions to Article 9 as proposed in the NOPR.**

Sincerely



Debbie Johnston  
Executive Vice President



October 16, 2023

Rachel Garcia, Bureau Chief  
Arizona Department of Health Services  
Bureau of Emergency Medical Services and Trauma System  
150 N. 18th Ave., Suite 540  
Phoenix, AZ 85007-3248  
Email: [Rachel.Garcia@azdhs.gov](mailto:Rachel.Garcia@azdhs.gov)

***RE: Proposed Ground Ambulance Rules proposed in Articles 9, 10, 11 and 12.***

Bureau Chief Garcia:

On behalf of the patients and communities we serve, Dignity Health is pleased to offer this letter of support to the Ground Ambulance Rules proposed in Articles 9, 10, 11 and 12.

Dignity Health is a respected leader in world-class medical care, cutting-edge research, superior education and compassionate patient care. Our rich history in Arizona began more than 125 years ago when the Sisters of Mercy opened a six bed hospital - St. Joseph's Hospital. Today, Dignity Health is the second largest health care system in Arizona with acute care hospitals that include: St Joseph's Hospital and Medical Center (which includes world-renowned Barrow Neurological Institute), Arizona General Hospital in Laveen, Arizona General Hospital in Mesa, Chandler Regional Medical Center, Mercy Gilbert Medical Center, St. Joseph's Westgate Medical Center and Yavapai Regional Medical Center. Dignity Health operates two Level I trauma centers, two Level four trauma centers, 14 free-standing emergency departments, a cancer institute, and multiple urgent care facilities, outpatient surgery centers, and imaging centers.

Dignity Health appreciates being part of the rule-making process that seeks to make patient care a priority in the delivery of emergency services. We are grateful for our longstanding partnerships with emergency medical services (EMS) providers throughout the state. They are an extension of what we do everyday - providing care to individuals

in their most vulnerable state. Like our EMS partners, we agree that there is a need to modify the ground ambulance rules.

Dignity Health facilitates more than 20,000 interfacility transports (IFT) annually throughout the state. For the past 20 years, the lack of transparency, performance expectations and evidence-based data has seriously impacted patient care in the interfacility transport sector. Therefore, our comments focus on key rules that pertain to patient care and interfacility transports.

### **Dignity Health supports the proposed R9-25-901. Definitions 47. Time-critical Condition**

### **Dignity Health supports the proposed R9-25-901. Definitions 38. Response Times**

The addition of the definition of “time-critical condition” acknowledges the appropriate response to a patient during a life or death situation and the need for immediate and ***appropriate*** medical care regardless of where the patient is physically located such as a hospital without specialized health care services or on a city street.

Not all hospitals can or should provide the same level of acute care services, and there are highly specialized, time-critical services such as vascular intervention for certain strokes that are only offered at a few tertiary care hospitals. Minutes count for patients with such time-critical conditions, and they are demonstrably harmed by delays in moving them from the facility where they first present. These patients with a demonstrated, clear need for timely care deserve the highest possible priority for movement between facilities. Under the existing rules, stroke, trauma, myocardial infarction, and other critically ill patients in an emergency department requiring transfer to a higher level facility are lumped in the broad category of “interfacility transports”, which functions as a scheduled service. Under the proposed rules, the new definition “time-critical conditions” appropriately requires medical and EMS personnel to treat specific “time-critical conditions” as 9-1-1 level patients, as they should be.

Some ambulance providers argue that *“if an ambulance provider received a dispatch for an IFT with a time-critical condition and a 9-1-1 dispatch at the same time, the ambulance provider will be forced to choose”*. This demonstrates the lack of clinical understanding and gravity of “time-critical conditions” as the patient’s needs are immediate and life-threatening. Under this scenario, the ambulance provider should provide an ambulance in BOTH situations.

The new “time-critical condition” definition appropriately prioritizes the patient's care in dire emergency situations and requires EMS providers to meet those emergency community needs. Furthermore, clearly establishing continuity in “response times” for patients with “time-critical conditions” and 9-1-1 conditions within the interfacility transport system is an equitable policy and the best patient protocol.

### **Dignity Health supports R9-25-906. Determining Public Necessity (A)**

For the first time since the Certificate of Need (CON) laws were enacted, the state legislature enacted [HB2609](#) which requires the Director to ensure quality patient care when determining public necessity - a condition for granting a CON to operate ambulances in Arizona. Paragraph A codifies the law into rules making the quality of patient care a priority that must be weighed when issuing and or renewing a CON.

### **Dignity Health supports R9-25907, Determining Response Times, Priority for Responses, and Response-Time Tolerances for Certificates of Necessity and Provision of ALS Services Compliance with Specified Times**

The detailed data collection required in this section provides more transparency in response times for the purpose of ensuring quality patient care. It appropriately establishes specific data elements to be collected and analyzed for the purpose of establishing response times and compliance. Without accurate data, appropriate response times can not be established. No data or poor data can lead to patient harm due to erroneous response times.

### **Dignity Health Supports R-9-25-908 Operations (E)(3) and (K)(2)**

The rules clearly delineate the call-in dispatch process for an interfacility transport of a patient with no time-critical condition. The provisions provide a clear straightforward process to be followed by the facility requesting the transport and the CON holder providing the ambulance. We do recommend, however, that the agency collect the call in and dispatch data or to periodically audit the call to ensure ambulance providers are providing accurate reported data.

If the call data and GPS data is captured digitally and reported to the Department without interference, we believe this will greatly improve the accuracy of the interfacility transport data.

The proposed rules also, appropriately layout quality improvement processes for CON holders that are not able to meet the quality of care standards.

### **Dignity Health Supports R9-25-1005 Minimum Standards for Ground Ambulance Vehicles (C)**

A.R.S. 36-2232 clearly mandates that an ambulance service shall install a global position in each vehicle to be used for response times. This rule appropriately operationalizes that mandate and clarifies voice and global positioning data, and such data will be used for response times.

### **Dignity Health recommends modification to R9-25-1005 Minimum Standards for Ground Ambulance Vehicles (E)**

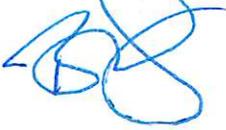
The rule implies that applicants could apply for and receive an annual waiver of the requirement to have GPS in their vehicles. While there may be a circumstance where an ambulance company may need a temporary reprieve from the requirement - the law does not allow for an exemption and certainly does not allow for a permanent waiver which, as currently written, could be allowed. Dignity Health recommends a more restrictive waiver such as a "one-time temporary waiver of not more than 30 days".

### **Summary**

The proposed ground ambulance brings transparency and accountability to interfacility transports making quality patient care a priority. Consistent with the direction of state law, the rules require appropriate data collection and analysis to ensure that evidence-based quality patient care is adhered to. It is the duty of the Director to ensure the safety of patients who are transported in ambulances in the State of Arizona. For those reasons, we support the proposed rules.

As a practicing emergency physician in the Phoenix area for more than 25 years and now the Chief Physician Executive for Dignity Health Southwest division, I have seen first hand the negative impact of delayed interfacility transports on patients, hospitals and the acute care system as a whole. The proposed rules provide for more transparency, oversight and accountability on behalf of our patients. The recent state legislative actions and the proposed rules are moving the state in a much better position in ensuring quality of care for our citizens. We are grateful for the work of ADHS and our EMS partners in being part of that achievement.

Sincerely,



Brian Tiffany, MD, PhD, FACEP  
Chief Physician Executive  
Dignity Health Southwest Division

cc: [ruthann.smejkal@azdhs.gov](mailto:ruthann.smejkal@azdhs.gov), [shelley.bissell@azdhs.gov](mailto:shelley.bissell@azdhs.gov), [Stacie.Gravito@azdhs.gov](mailto:Stacie.Gravito@azdhs.gov)



October 16, 2023

Rachel Zenuk Garcia, MPH, MCHES  
Chief, Bureau of EMS and Trauma System  
Arizona Department of Health Services  
Bureau of Emergency Medical Services and Trauma System  
150 N. 18<sup>th</sup> Avenue, Suite 540  
Phoenix, AZ 85007

Re: List of calls discuss in meeting on September 7th

Dear Ms. Garcia

Attached are copies of the two handouts I addressed during Oral Presentation today at the ADHS offices. We are asking that the rules be bifurcated into those rules that are required by HB 2609 and those that are not required by HB 2608. The two handouts were separated into these two categories.

While we understand and agree with the need to implement the rules pertaining to HB 2609, we do not agree that the whole package as presented. It was explained in oral presentations that this bifurcation would result in a two month delay in rules pertaining to HB 2609. While we would not like to see this delay, we have a problem with using this as an excuse to implement rules that have major opposition from the ambulance providers.

If I can be of any additional assistance with this matter, please do not hesitate to contact me at (602) 696-4489 or [James.Roeder@gmr.net](mailto:James.Roeder@gmr.net).

Sincerely



Jim Roeder  
Regulatory Manager

## RULES REQUIRED BY HB 2609

**A.R.S. 36-2232 (A)(3)** Response times are calculated shall begin when the public safety answering point (PSAP) contacts an ambulance service for dispatch and conclude when the ambulance service arrives at the dispatched location. On-scene arrival times for response time measurement shall be documented by the ambulance service using dispatch or global positioning system data.... Response time data that is compliant with the health insurance portability and accountability act of 1996 shall be filed annually with the Department.

R9-25-901(38) "Response Time" means the difference between the time a certificate holder receives:  
a. A 9-1-1 or similar system dispatch and the time the certificate holder's first ground ambulance arrives at the scene

**A.R.S. 36-2232 (A)(4)** Review response times established pursuant to paragraph 3 of this subsection with the ambulance service and update the response times based on, at a minimum, population density and geographic and medical considerations, and the financial impact on rates and charges, every 6 years. One additional review may be requested by a city, town, fire district, or fire authority whose jurisdictional boundaries are within the service area of a CON or an existing CON Holder within the service area of the CON.

R9-25-907 Determining Response Times, Priority for Responses, and Compliance with Specified Times

- A. The Department may periodically assess whether the following parameters, as associated with a certificate of necessity, are appropriate to ensure quality patient care;
1. Response times, consistent with A.R.S. 36-2232(A)(5) and 36-2236(E);
  2. The priority to be assigned by a certificate holder to a response;
  3. The percentage of time that the actual response time for a run is compliant with the response times for the certificate of necessity during a 12-month period;
  4. If applicable, the plan for complying with the requirements in R9-25-908(E)(3)(e)
  - 5-4. If applicable, the percentage of time that the certificate holder is compliant with the standards in the plan in subsection (A)(4) during a 12-month period.

In determining response times, the priority to be assigned by a certificate holder to a response, and the percentage of time the actual response time for a run is compliant with the proposed response times during a 12-month period for all or part of a service area or proposed service area, the Director may consider the following:

1. Differences in scene locality, if applicable
2. The response times and compliance percentages of other ground ambulance services in similar scene localities, as determined by historical response time data;
3. The population density and demographics in the service area or proposed service area;
4. The geographic features and environmental conditions within the service area or proposed service area;
5. The geographic distribution of health care institutions within and surrounding the service area or proposed service area to which and from which the ground ambulance service would be transporting patients;
6. Requirements of a 9-1-1 or similar dispatch system for all or part of the service area;

7. Requirements in a contract approved by the Department between a ground ambulance service and a political subdivision or health care institution;
8. Whether the certificate holder provides interfacility transports of patients with a time-critical condition and, if so:
  - a. The geographic distribution of health care institutions in the service area, and
  - b. The anticipated volumes of 9-1-1 dispatches of interfacility transports;
9. The basis for prioritizations for the dispatch of a ground ambulance vehicle ~~of an emergency medical services provider~~;
10. Information from a political subdivision, a health care institution, an elected official, or another interest party, as described in A.R.S. 36-2233(D), in the service area that was received by the Department about the request; and
11. Other information submitted according to R9-25-902(A)(2) and 14 or R9-25-905(B), as applicable; and
12. Other matters determined by the Director to be relevant to a determination of response times and compliance percentage, for each scene locality and priority that will be assigned by the applicant to a response.

C. The Department may:

1. Develop a set of ~~uniform standards for~~ response times based on historical response time data:
  - a. By using the scene locality of a service area or proposed service area, and
  - b. ~~Considering the response time for 90 percent of runs:~~
2. Compare the actual performance of a ground ambulance service to the applicable ~~uniform standard developed response times~~ according to subsection (C)(1);
3. Establish response times based on the applicable uniform standard ~~for the CON service area~~ and the factors specified in subsection (B); and
4. Take enforcement action, if appropriate, against a certificate holder based on response-time performance compared with the uniform standard, taking into consideration the factors in subsection (B)

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R9-25-908(G) Response Time Performance: A certificate holder shall ensure that:

1. Response times resulting from a 9-11 system dispatch ~~or, if applicable, a request for the interfacility transport of a patient with a time-critical condition comply~~ with requirements of the certificate holder's certificate of necessity.
3. The following are reported to the Department annually, in a Department-provided format, concurrent with the submission of the information required in R9-25-909;
  - a. Response time data that complies with requirements in A.R.S.2232(A)(3)

**A.R.S. 36-2232(C)(5)** Install and maintain a GPS monitoring device in each vehicle that is used for transport to record on-scene arrival times for response time measurement. The department shall provide a waiver to an ambulance service that can reasonably demonstrate it is unable to meet the requirements of this paragraph.

R9-25-1005(C)An applicant for a certificate of registration or a certificate holder shall ensure that a ground ambulance vehicle is equipped:

- (2) Except as provided in subsection (E), with a global positioning monitoring device to enable the recording of times of arrival on-scene for determining response times.

R9-25-1005(E) An applicant for a certificate of registration or a certificate holder may request a waiver of the requirement in subsection (C)(2) by submitting to the Department, on an annual basis and in a Department-provided format, the following information.

1 thru 3.

4. A reason and justification for the waiver

5 thru 8

**A.R.S. 36-2233 (B - E) CON APPLICATION TIME LINES**

Article 12

### GPS MONITORING DEVICE WAIVER:

Criteria for obtaining a waiver is needed

- For example:
- Financial Issues
  - Connectivity Issues
  - Other?

### RESPONSE TIMES

R9-25-901(38) Response Time

- a. This language is fine
- b. Interfacility Transport of a patient with a time-critical condition is new language and lacks statutory authority

R9-25-901(39) - Scene Locality:

- Keep current Urban, Suburban, Rural and Wilderness definitions unless and until a workable solutions can be determined.
- The definition of Scene Locality is unworkable as it is extremely difficult to discern what calls are in which locality on an operational level.
- It will be burdensome to implement and impossible to explain to citizens why their neighbor on the other side of the street in a city or town has different response time requirements
- Relying on small census block population density create major problems that will result in significant increases in cost and therefore rates.

R9-907(C)(1) Develop a set of uniform standards for response times based on historical response time data:

- a. By using scene locality of a service area or proposed service area, and
- b. Considering the response time for 90 percent of runs.

Lacks statutory authority.

A.R.S. 36-2232(A)(3) states that “The rules adopted by the Director for certificated ambulance service response time shall include uniform standards for Urban, Suburban, Rural, and Wilderness geographic areas with the Certificate of Necessity **BASED ON AT A MINIMUM POPULATION DENSITY, AND GEOGRAPHY AND MEDICAL CONSIDERATION.**”

This rule appears to establish a statewide response time requirement. The result is a response time requirement base solely on population density. Therefore, a universal statewide response time requirement lacks statutory authority.

Additionally, establishing response times that ignore geographic and medical considerations creates an unreasonably burdensome expense to the CON Holder.

## **INTERFACILITY TRANSPORT RESPONSE TIMES:**

The following rules require or reference Interfacility Response Times:

R9-25-901(38)(a) – Includes Interfacility Transport of a patient with a time -critical condition

R9-25-901(47) – “Time-critical condition”

R9-25-901(48) – “Time-sensitive condition”

R9-25-902(A)(2)(p) Requires Interfacility Transport (“IFT”) Response Times and compliance percentages

R9-25-905(B)(5)(a & b) Require Response times and compliance percentages for IFT

R9-25-905(B)(7) Requires IFT response times and compliance percentages

R9-25-906(B)(2 & 3) Requires response times for IFT patients with time-critical condition or Non-time-critical condition.

R9-25-907(B)(8) Requires information about IFT transports of patients with time-critical condition

R9-25-908(H) Performance of Interfacility transports of patients with no time critical condition including patients with time-sensitive condition.

All the references to Interfacility Transport Response Times need to be withdrawn because:

- They lack statutory authority.
- They create a situation where rural providers will be forced to pick which rule they will have to violate
- They will create significant increased costs to the ambulance providers
- Given the available certificated work force, it is likely that providers will be unable to recruit and hire sufficient qualified works to meet the requirements of IFT Transport response times.

## **RATES AND CHARGES**

### **CRITICAL CARE RATE**

#### **R9-25-901(17) Critical Care Rate**

- c. equivalent to at least the amount for specialty care transport, as used in federal Medicare guidelines.

This would mean that the reimbursement for Critical Care is less than that for either ALS or BLS Base Rate for the ambulance service.

The appropriate language should state that the amount “ shall be greater than the ALS Base Rate”.

### **UNIFIED RATE GROUP**

#### **R9-25-1102(C)(D) Joining and/or leaving a uniform rate group**

A.R.S. 36-2232(E) If all ambulance services that have been granted authority to operate

within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area.

Therefore, if a CON is awarded has the same service area or overlapping service area, and is given rates different than the unified rate group, the unified rate group is no longer valid.

Likewise, if a member of the unified rate group is awarded rates different than the unified rate group, the unified rate group is no longer valid.

#### **RATE OF RETURN**

**R9-25-1106(C)** Changes the guidance for the Director setting rates from “at least 7%” to “no more than 7%” of gross revenue AND changes “unless the certificate holder requests a lower rate of return” to “unless the certificate holder provides sufficient justification for a higher rate of return.”

This

October 15, 2023

Rachel Garcia, Bureau Chief

Arizona Department of Health Services Bureau of Emergency Medical Services and Trauma System  
150 N. 18th Ave., Suite 540 Phoenix, AZ 85007-3248

The following comments reflect the position of Guardian Medical Transport, CON 26, in reference to the needed changes to the current draft rules.

Item 1:

Chapter 381, an Act, also referred to as HB 2609, can only be applied to initial and amended certificates of necessity. It is clearly written under Sec. 11. Applicability: *This act applies to initial and amended certificates of necessity filed with the Department of Health Services pursuant to section 36-2233, Arizona Revised Statutes, as amended by this act, from and after December 31, 2023.* This was the intent of the legislative action that was passed into law. Chapter 381 includes response times, response time performance, response time reporting, GPS equipment, CON application time lines, etc., and these can only apply if there is an initial CON or an amended CON. Therefore, all of these topics must be put in the initial CON R9-25-902 section and the amended R9-25-905 section; or clearly state the applicability where these topics are written in the current draft rules. The act does not apply to a CON holder who does not have an initial CON or an amended CON and this is something that will have to be fixed by the legislature. I recommend taking this into exempt rule making for 2024 to have extra time to ensure legal compliance.

Item 2:

Response times, as written in the current proposed rules, is not clear and leads to speculation as to what are uniform and fair response times. Chapter 381, an Act, also referred to as HB 2609, has the basis for uniform and fair response times, and I would recommend taking this into exempt rule making for 2024 to have extra time to ensure legal compliance with a standardized and clear process for response times. The ambulance industry is moving away from emergency lights and siren response to all calls dispatched through a 911 system. The recent discussions about safe and effective response is an important opportunity that should be further explored in 2024.

A.R.S. 36-2232 (A)(3) Response times are calculated shall begin when the public safety answering point (PSAP) contacts an ambulance service for dispatch and conclude when the ambulance service arrives at the dispatched location. On-scene arrival times for response time measurement shall be documented by the ambulance service using dispatch or global positioning system data.... Response time data that is compliant with the health insurance portability and accountability act of 1996 shall be filed annually with the Department. R9-25-901(38) "Response Time" means the difference between the time a certificate holder receives: A 9-1-1 or similar system dispatch and the time the certificate holder's first ground ambulance arrives at the scene

Item 3:

The interfacility transport response times as written in current draft are not supportive of the ambulance industry, do not address any hospital responsibilities and place ambulance agencies as the only party to receive enforcement and corrective action plans. Chapter 381, an Act, also referred to as HB 2609, clearly defines what response times are, how to calculate response times and review these response times. The Director of ADHS must adopt rules based on those new parameters of response times and cannot apply them to a new definition of interfacility transports because that would be outside of the

911 PSAP definition of Chapter 381. To make the proposed rule language fair to ambulance providers, R9-25-908 E-3-b-iii Considerations could easily include “consideration of the 911 emergency resources of a sole provider CON” to balance out a real point of discussion between an ambulance and a hospital. There should also be a language for an agreement/contract between an ambulance and a hospital that work in a collaborative manner that may work outside of the proposed rule language. The proposed language should include “the facility requesting the interfacility must provide the documents stated in 42 CFR410.40 at the time of the scheduling request”. 42 CFR410.40 Physician certification statement means a statement signed and dated by the beneficiary's attending physician which certifies that the medical necessity provisions of the transport.

Item #4:

R9-25-901 (39) The definition of “scene locality” is not clear and leads to speculation of how to apply response times to map definitions of scene locality and population. The Census Bureau does not utilize suburban and wilderness, yet the Bureau’s definitions refer to Census Bureau data for determining suburban and wilderness. These map overlays need to be defined by the Bureau in a fair and uniform manner that takes into consideration the unique geography of each CON or let the CON develop a map that demonstrates accurate scene locality, population and unique geographic considerations that can be approved by the Bureau. As a CON holder, I would like clarity about how to portray my response area in terms of scene locality and population.

Item #5:

R9-25-901 Definition of Critical Care Rate Needs to be changed to “greater than the ALS rate”, and the proposed language referencing “equivalent to federal Medicare guidelines” needs to be removed. This limits the potential reimbursement for critical care transports that have a higher operational cost and higher liability by providing critical care services. There would never be a situation in which the critical care rate would be less than the ALS rate and the proposed rule needs to reflect this reality.

Item #6:

R9-25-908 Operations-J-Records 2:

Needs to include “As Available”. A certificate holder shall ensure that Dispatch records for each call or request for service, including all cancelled runs, contain the following information, in a department provided format. “As Available” addresses deficits in dispatching software in which there is no field available and where that deficit may possibly be recorded in electronic patient care report (ePCR). Dispatch software does not work in the manner in which the proposed rule is written. Computer Aided Dispatch (CAD) will import some information into the ePCR but there are definite limitations with both software programs and the data bases do not equal each other, there are always variances. The Bureau economic impact statement does not address the cost to CON holders to come up with dispatching solutions for deficient fields which may not even be offered by the software vendors. The Bureau makes the “As Available” allowance on the ePCR side of R9-25-908 Operations-J-1 pre-hospital incident history report.

Thank you,

Vince Martinez MSN, RN, CEP  
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January 31, 2024

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RE: Rule change for ground ambulance standards

Council Members,

I am writing this letter requesting a reasonable approach to a recent change in rule making affecting ground ambulance minimum standards as outlined in the August 2023 draft rules for Article 10 of the Department of Health Services statute and rule book.

R9-25-1005; Minimum Standards for Ground Ambulance Vehicles; Authorized by A.R.S 36-2202(A)(5), 36-2232(C)(5) outlines the minimum equipment and standards required for all ground ambulance vehicles operated in the State of Arizona.

Proposed changes to restraint systems defined in R9-25-1005(B)(36) may have a significant financial impact on many emergency services throughout the State of Arizona. As the new rules are being disseminated, it appears that agencies will be required to retrofit all existing ambulances that currently have lap belt systems, to a minimum of a three-point restraint system for each seat.

This process will require agencies to transport each unit requiring retrofit to the respective manufacturing plants to complete the conversion. The work will likely entail removal of all patient compartment components, including siding, to reveal the structural framework of each unit. Additional framework will likely need to be installed to convert to a three-point restraint system that will meet the safety standards of the National Highway Traffic Safety Administration.

The minimum cost associated with this retrofit per Braun Northwest, a prominent ambulance manufacturer, would run anywhere from \$10,000 to \$15,000 secondary to the scope of work as above.

In addition to the financial impact, most agencies are still experiencing challenges secondary to chassis shortages limiting the ability to update aging fleets. Agencies are being forced to hold on to older fleets to continue to meet emergency service delivery needs. Removing additional fleet for retrofit purposes will only exacerbate individual fleet shortages and threaten service delivery.



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I am certain that most if not all agencies affected by this rule change support the implementation of improved restraint systems for their providers but would question the efficacy of changing existing ground ambulances that were built under an existing standard that has existed for 30 years.

In addition, when looking holistically at restraint requirements for various transportation methods in the State of Arizona, there is an evident disparity. For instance, ground ambulance services have been required to maintain safety restraint systems for the past 30 years and existing units built over that time frame meet that standard. Whereas many school buses in the State of Arizona lack any type of restraint system for passengers and are not currently required to install them. In comparison, it appears that our school children are placed at a much greater risk of injury or death without restraint requirements than ground ambulances that have existing restraints overall.

I would respectfully recommend that the State of Arizona, and the Governor's Regulatory Review Council consider a commonsense approach to implementing this regulation. For instance, if language was placed in rulemaking to include a start date for all ground ambulances manufactured on or after January 1<sup>st</sup>, 2025, to meet the minimum three-point restraint requirement, agencies would be able to adhere to this new standard moving forward. All existing units would ultimately drop off with attrition.

I believe this would minimize the financial impact to all emergency service organizations, keep fleet availability at maximum levels, minimize potential service disruptions, and transition all ground ambulances to a higher safety standard over time.

Thank you for your consideration,

Regards,

A handwritten signature in black ink, appearing to read "David Guth".

David Guth

Chief

Verde Valley Ambulance Company

## **Statutory Authority for Rules in 9 A.A.C. 25, Articles 9, 10, and 11**

### **36-136. Powers and duties of director; compensation of personnel; rules; definitions**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored,

handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.
- (j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:
  - (i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.
  - (ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being

thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these

places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

### **36-2202. Duties of the director; qualifications of medical director**

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.

2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2, who hold valid certification with a national certification organization or who have completed training and testing by the United States armed forces at a level comparable to the national standards for emergency medical care technicians. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification test examines comparable material to that examined in the tests of a national certification organization.

3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.

4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.

5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures to issue a certificate of registration to operate an ambulance.

6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.

2. Successfully completing an emergency medical technician challenge course approved by the department.
  3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.
- C. After consultation with the emergency medical services council, the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.
- D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.
- E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.
- F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:
1. Determines that the rule is not in the public's best interest.
  2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
  3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.
- G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.
- H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.
- I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.
- J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services:
1. Providing interfacility transportation in any certificate of necessity area of this state have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) or (b) staffing an ambulance while transporting a patient.
  2. Serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) or (b) staffing an ambulance while transporting a patient.

3. Serving a population of ten thousand persons or more have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

#### **36-2204. Medical control**

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.
2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.
3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.
4. Standardized continuing education criteria for all classifications of emergency medical care technicians.
5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.
8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.
9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.
10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.

11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.
12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

**36-2212. Certificate of registration to operate an ambulance; termination on change in ownership; fees; exemption**

- A. A person shall not operate an ambulance in this state unless the ambulance has a certificate of registration and complies with this article and the rules, standards and criteria adopted pursuant to this article.
- B. A person may obtain a certificate of registration to operate an ambulance by submitting an application on a form prescribed by the director and by demonstrating to the director's satisfaction that the applicant is in compliance with this article and all rules, standards and criteria adopted by the director for the operation of an ambulance.
- C. A certificate of registration issued under this section terminates upon any change of ownership or control of the ambulance. Following any change of ownership, the new owner of an ambulance shall apply for and receive a new certificate of registration from the director before the ambulance may again be operated in this state. This subsection does not apply if an ambulance service borrows, leases, rents or otherwise obtains a registered ambulance from another ambulance service to temporarily replace an inoperable ambulance.
- D. The department shall issue a certificate of registration to a person who complies with the requirements of this article and who pays an initial registration fee. A certificate of registration is valid for one year. However, an ambulance service may request that the department issue an initial certificate of registration that expires before the end of one year in order for the department to conduct an annual inspection of all of the ambulance service's ambulances at one time. A person may renew a certificate of registration by complying with the requirements of this article and by paying a renewal fee prescribed by the director. The fee for initial registration and registration renewal shall not exceed fifty dollars for each ambulance. The department shall base these fees on an amount that approximates the per vehicle costs incurred by the department to administer this chapter. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected under this subsection in the state general fund. The department shall not charge a registration fee for an ambulance to an ambulance service that operates an ambulance or ambulances only as a volunteer not-for-profit service.

**36-2232. Director; powers and duties; regulation of ambulance services; inspections; response time compliance; mileage rate calculation factors**

- A. The director shall adopt rules to regulate the operation of ambulances and ambulance services in this state. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated. The rules shall provide for the department to do the following:
  1. Consistent with the requirements of subsection H of this section, determine, fix, alter and regulate just, reasonable and sufficient rates and charges for the provision of ambulances, including rates and charges for advanced life support service, basic life support service, patient loaded mileage, standby waiting, subscription service contracts and other contracts for services related to the provision of ambulances. The director shall inform all ambulance services of the procedures and methodology used to determine ambulance rates or charges.
  2. Ensure evidence-based quality patient care is the priority for decision-making.
  3. Regulate operating and response times of ambulances to meet the needs of the public and to ensure adequate service. The rules adopted by the director for certificated ambulance service response times shall include uniform standards for urban, suburban, rural and wilderness geographic areas within the certificate of necessity based on, at a minimum, population density and geographic and medical considerations. The calculation of response times shall begin when the

public safety answering point contacts an ambulance service for dispatch and conclude when the ambulance service arrives at the dispatched location. On-scene arrival times for response time measurement shall be documented by the ambulance service using dispatch or global positioning system data, or a combination of both, and kept on file. Response time data that is compliant with the health insurance portability and accountability act of 1996 shall be filed annually with the department. When dispatch or global positioning system connectivity is not available, the ambulance service shall manually document on-scene arrival times for response time measurement. The response time data shall be filed in a department-approved format, and the department shall make the response time data publicly available.

4. Review response times established pursuant to paragraph 3 of this subsection with the ambulance service and update the response times based on, at a minimum, population density and geographic and medical considerations, and the financial impact on rates and charges, every six years. One additional review each six-year period may be requested by a city, town, fire district or fire authority whose jurisdictional boundaries in whole or in part are within the service area of a certificate of necessity or an existing certificate of necessity holder within the service area of the certificate of necessity.

5. Determine, fix, alter and regulate bases of operation. The director may issue a certificate of necessity to more than one ambulance service within any base of operation. For the purposes of this paragraph, "base of operation" means a service area granted under a certificate of necessity.

6. Issue, amend, transfer, suspend or revoke certificates of necessity under terms consistent with this article.

7. Prescribe a uniform system of accounts to be used by ambulance services that conforms to standard accounting forms and principles for the ambulance industry and generally accepted accounting principles.

8. Require the filing of an annual financial report and other data. These rules shall require an ambulance service to file the report with the department not later than one hundred eighty days after the completion of its annual accounting period.

9. Regulate ambulance services in all matters affecting services to the public to the end that this article may be fully carried out.

10. Prescribe bonding requirements, if any, for ambulance services granted authority to provide any type of subscription service.

11. Offer technical assistance to ambulance services to ensure compliance with the rules.

12. Offer technical assistance to ambulance services in order to obtain or to amend a certificate of necessity.

13. Inspect, at a maximum of twelve-month intervals, each ambulance registered pursuant to section 36-2212 to ensure that the vehicle is operational and safe and that all required medical equipment is operational. At the request of the provider, the inspection may be performed by a facility approved by the director. If a provider requests that the inspection be performed by a facility approved by the director, the provider shall pay the cost of the inspection.

B. The director may require any ambulance service offering subscription service contracts to obtain a bond in an amount determined by the director that is based on the number of subscription service contract holders and to file the bond with the director to protect all subscription service contract holders in this state who are covered under that subscription contract.

C. An ambulance service shall:

1. Maintain, establish, add, move or delete suboperation stations within its base of operation to ensure that the ambulance service meets the established response times or those approved by the director in a political subdivision contract.

2. Determine the operating hours of its suboperation stations to provide for coverage of its base of operation.

3. Provide the department with a list of suboperation station locations.
4. Notify the department not later than thirty days after the ambulance service makes a change in the number or location of its suboperation stations.
5. Beginning January 1, 2024, install and maintain an electronic global positioning system monitoring device in each vehicle that is used for transport to record on-scene arrival times for response time measurement. The department shall provide a waiver on a department-approved form to an ambulance service that can reasonably demonstrate it is unable to meet the requirements of this paragraph.

D. At any time, the director or the director's agents may:

1. Inquire into the operation of an ambulance service, including a person operating an ambulance that has not been issued a certificate of registration or a person who does not have or is operating outside of a certificate of necessity.
2. Conduct on-site inspections of facilities, communications equipment, vehicles, procedures, materials and equipment.
3. Review the qualifications of ambulance attendants.

E. If all ambulance services that have been granted authority to operate within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area.

F. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director of the department of health services shall establish protocols for ambulance services to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution as defined in section 36-401 based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

G. The director, when reviewing an ambulance service's response time compliance with its certificate of necessity, shall consider in addition to other factors the effect of hospital diversion, delayed emergency department admission and the number of ambulances engaged in response or transport in the affected area.

H. The department shall incorporate all of the following factors when calculating the proposed mileage rate:

1. The cost of licensure and registration of each ground ambulance vehicle.
2. The cost of fuel.
3. The cost of ground ambulance vehicle maintenance.
4. The cost of ground ambulance vehicle repair.
5. The cost of tires.
6. The cost of ground ambulance vehicle insurance.
7. The cost of mechanic wages, benefits and payroll taxes.
8. The cost of loan interest related to the ground ambulance vehicles.
9. The cost of the weighted allocation of overhead.
10. The cost of ground ambulance vehicle depreciation.
11. The cost of reserves for replacement of ground ambulance vehicles and equipment.

**36-2233. Certificate of necessity to operate an ambulance service; notification of interested parties; exceptions; service areas**

A. Any person wishing to operate an ambulance service in this state shall apply to the department on a form prescribed by the director for a certificate of necessity.

B. Within one hundred eighty days after receiving an application for a certificate of necessity as prescribed in this section, the director shall make a determination based on whether necessity for the ambulance service is found to exist and the applicant meets the requirements of subsection F of this section. If the director requests additional information from the applicant after initial review, the applicant shall have thirty business days to respond. On request, the director may give the applicant one additional period of thirty business days to respond. If the applicant fails to respond to the director's request for additional information, the department shall deem the initial or amended application withdrawn. An application deemed withdrawn is not an appealable agency action pursuant to title 41, chapter 6, article 10. The applicant may appeal a denial only pursuant to section 36-2234. The one hundred eighty-day period for the director to make the determination of necessity does not include the time the applicant uses to respond to requests for additional information.

C. On receipt of an initial or amended application for a certificate of necessity, the department shall post a notice of the application on its website. Within thirty days after the department posts a notice pursuant to this subsection, any interested party may provide information to the director on a form in a department-approved format for consideration. If an interested party fails to respond to the notice within sixty days in a department-approved format, the information may not be considered during the review of the application.

D. For the purposes of this section, a city, town, fire district, fire authority or tribal government whose jurisdictional boundaries in whole or in part are within the service area of a certificate of necessity, an existing certificate of necessity holder within the service area of the certificate of necessity or a hospital that is licensed pursuant to chapter 4 of this title and that is located within the service area of a certificate of necessity is considered to be an interested party as a matter of law.

E. All interested parties shall be notified of any application for an initial or amended certificate of necessity within fifteen days after the application is filed, within fifteen days after the application is complete and within fifteen days after a decision by the director. The director's decision pursuant to subsection F of this section is final unless appealed pursuant to section 36-2234, subsection A.

F. The director shall issue a certificate of necessity if all of the following apply:

1. The director finds that public necessity requires the service or any part of the service proposed by the applicant.
2. The director finds that the applicant is fit and proper to provide the service.
3. The applicant has paid the appropriate fees pursuant to section 36-2240.
4. The applicant has filed a surety bond pursuant to section 36-2237.

G. A certificate of necessity issued pursuant to subsection F of this section shall be for all or part of the service proposed by the applicant as determined necessary by the director for public convenience and necessity.

H. This section does not require a certificate of necessity for:

1. Vehicles and persons that are exempt from a certificate of registration pursuant to section 36-2217.
2. Ambulance services operating under temporary authority pursuant to section 36-2242.

I. The director may grant a service area by one or any combination of the following descriptions:

1. Metes and bounds.
2. A city, town or political subdivision not limited to a specific date. The merger or consolidation of two or more fire districts pursuant to section 48-820 or 48-822 does not expand the service area boundaries of an existing certificate of necessity.

3. A city, town or political subdivision as of a specific date that does not include annexation.

**36-2235. Terms of certificates of necessity; initial term; renewal**

A. The initial certificate of necessity issued pursuant to section 36-2233 to each ambulance service shall be for a term of one year.

B. On the expiration of a certificate of necessity, if the holder of the certificate meets all requirements, applies for a renewal and pays the fees prescribed in section 36-2240, the director shall renew the certificate for a term of three years without public hearing or waiver unless cause is shown to set a hearing to consider denial or renewal for a shorter term.

C. If the director does not conclude a hearing to show cause within ninety days of the expiration date of the certificate, the certificate shall be renewed for a period of not less than one year. The term of the certificate shall be extended to three years if the director determines that cause is not established for denial or renewal for a shorter term. For the purposes of this subsection, "hearing to show cause" means a hearing ordered by the director pursuant to section 36-2245 to determine if any grounds exist to prevent an ambulance service from carrying out the provisions of subsection B of this section during the current term of the certificate.

**36-2236. Nature of certificates of necessity; transfer; suspension; service area**

A. A certificate of necessity issued pursuant to this article is not a franchise, may be revoked by the director and does not confer a property right on its holder.

B. A certificate of necessity shall not be assigned or otherwise transferred without the written approval of the director. When any certificate is assigned or transferred, the director shall issue to the assignee or transferee a new certificate that is valid only for the unexpired term of the transferred or assigned certificate.

C. In case of emergency, the director may suspend a certificate of necessity as provided in section 36-2234.

D. If a certificate of necessity issued pursuant to this article is issued to a city, town, fire district, fire authority or other political subdivision of this state, the service area shall be all the geographic area lying within the jurisdictional boundaries of the city, town, fire district, fire authority or political subdivision, unless the certificate issued by the director specifically excludes a portion of the city, town, fire district, fire authority or political subdivision or includes an additional service area outside the jurisdictional boundaries of the city, town, fire district, fire authority or other political subdivision. If the jurisdictional boundaries of a city, town, fire district, fire authority or other political subdivision expand, the service area in the certificate of necessity expands to reflect those jurisdictional boundaries, except as prescribed in section 36-2233, subsection I, paragraph 2. This subsection does not affect the validity of any previously granted certificate for an unincorporated area lying within the boundaries of a city.

E. If the population of a service area changes by ten percent or more based on the most recent decennial census or five-year census estimate, the department must conduct a review to determine whether adjustments must be made to the response times in the service area, taking into consideration the impact on rates and charges.

**36-2237. Required insurance, financial responsibility or bond; revocation for failure to comply**

A. The director shall not issue a certificate of necessity to an ambulance service unless the service has filed with the department a certificate of insurance or other evidence of financial responsibility in an amount the director deems necessary to adequately protect the interests of the public. The liability insurance shall bind the insurer to pay compensation for injuries to persons and for loss or damage to property resulting from the negligent operation of the ambulance service.

B. If an application for a certificate of necessity includes any type of subscription service contract and, in the director's discretion, a surety bond is necessary pursuant to section 36-2232, the director shall not issue a certificate of necessity until the applicant has filed a surety bond with the director in

the form and amount determined by him on which bond the applicant is the principal obligor and this state is the obligee. The director shall approve the bond and the bond must be with a surety company authorized to transact business in this state as surety on the bond. The bond must be conditioned on the payment by the applicant to any subscribers that may be parties to any type of subscription service contract.

C. The director shall fix the total amount of the bond required and the director may increase or decrease the bond amount subject to criteria adopted by rule and regulation.

D. The director shall revoke the certificate of necessity of any ambulance service which fails to comply with this section.

**36-2239. Ambulance services; rates; charges; adjustment; civil penalty**

A. An ambulance service that applies to adjust its rates or charges shall automatically be granted a rate increase equal to the amount determined under section 36-2234, subsection G, if the ambulance service is so entitled. An automatic rate adjustment that is granted pursuant to this subsection and that is filed on or before April 1 is effective June 1 of that year. The department shall notify the applicant and each health care services organization as defined in section 20-1051 of the rate adjustment on or before May 1 of that year.

B. Notwithstanding subsection E of this section, if the department does not hold a hearing within ninety days after an ambulance service applies to the department to adjust its rates or charges, the ambulance service may adjust its rates or charges to an amount not to exceed the amount sought by the ambulance service in its application to the department. An ambulance service shall not apply to adjust its rates or charges more than once every six months.

C. At the time the department holds a hearing on the rates or charges of an ambulance service pursuant to section 36-2234, the department may adjust the rates or charges adjusted by the ambulance service pursuant to subsection B of this section, but the adjustment shall not be retroactive.

D. Except as provided in subsection H of this section, an ambulance service shall not charge, demand or collect any remuneration for any service greater or less than or different from the rate or charge determined and fixed by the department as the rate or charge for that service. An ambulance service may charge for disposable supplies, medical supplies and medication and oxygen related costs if the charges do not exceed the manufacturer's suggested retail price, are uniform throughout the ambulance service's certificated area and are filed with the director. An ambulance service shall not refund or limit in any manner or by any device any portion of the rates or charges for a service that the department has determined and fixed or ordered as the rate or charge for that service.

E. The department shall determine and render its decision regarding all rates or charges within ninety days after commencement of the applicant's hearing to adjust rates or charges. If the department does not render its decision as required by this subsection, the ambulance service may adjust its rates and charges to an amount that does not exceed the amounts sought by the ambulance service in its application to the department. If the department renders a decision to adjust the rates or charges to an amount less than that requested in the application and the ambulance service has adjusted its rates and charges higher than the adjustment approved by the department, within thirty days after the department's decision the ambulance service shall refund to the appropriate ratepayer the difference between the ambulance service's adjusted rates and charges and the rates and charges ordered by the department. The ambulance service shall provide evidence to the department that the refund has been made. If the ambulance service fails to comply with this subsection, the director may impose a civil penalty subject to the limits provided in section 36-2245.

F. An ambulance service shall charge the advanced life support base rate as prescribed by the director under any of the following circumstances:

1. A person requests an ambulance by dialing telephone number 911, or a similarly designated telephone number for emergency calls, and all of the following apply:

- (a) The ambulance is staffed with at least one ambulance attendant.
  - (b) The ambulance is equipped with all required advanced life support medical equipment and supplies for the advanced life support attendants in the ambulance.
  - (c) The patient receives advanced life support services or is transported by the advanced life support unit.
2. Advanced life support is requested by a medical authority or by the patient.
3. The ambulance attendants administer one or more specialized treatment activities or procedures as prescribed by the department by rule.
- G. An ambulance service shall charge the basic life support base rate as prescribed by the director under any of the following circumstances:
1. A person requests an ambulance by dialing telephone number 911, or a similarly designated telephone number for emergency calls, and all of the following apply:
- (a) The ambulance is staffed with two ambulance attendants certified by this state.
  - (b) The ambulance is equipped with all required basic life support medical equipment and supplies for the basic life support medical attendants in the ambulance.
  - (c) The patient receives basic life support services or is transported by the basic life support unit.
2. Basic life support transportation or service is requested by a medical authority or by the patient, unless any provision of subsection F of this section applies, in which case the advanced life support rate applies.
- H. For each contract year, the Arizona health care cost containment system administration and its contractors and subcontractors shall provide remuneration for ambulance services for persons who are enrolled in or covered by the Arizona health care cost containment system in an amount equal to 68.59 percent of the amounts as prescribed by the department as of July 1 of each year for services specified in subsections F and G of this section and 68.59 percent of the mileage charges as determined by the department as of July 1 of each year pursuant to section 36-2232. The Arizona health care cost containment system administration shall annually adjust the Arizona health care cost containment system fee schedule according to the department's approved ambulance service rate in effect as of July 1 of each year. The rate adjustments made pursuant to this subsection are effective beginning October 1 of each year.
- I. In establishing rates and charges, the director shall consider the following factors:
- 1. The transportation needs assessment of the medical response system in a political subdivision.
  - 2. The medical care consumer price index of the United States department of labor, bureau of labor statistics.
  - 3. Whether a review is made by a local emergency medical services coordinating system in regions where that system is designated as to the appropriateness of the proposed service level.
  - 4. The rate of return on gross revenue.
  - 5. Response times pursuant to section 36-2232, subsection A, paragraphs 3 and 4.
- J. Notwithstanding section 36-2234, an ambulance service may charge an amount for medical assessment, equipment or treatment that exceeds the requirements of section 36-2205 if requested or required by a medical provider or patient.
- K. Notwithstanding subsections D, F and G of this section, an ambulance service may provide gratuitous services if an ambulance is dispatched and the patient subsequently declines to be treated or transported.

**36-2240. Fees**

Fees not to exceed the following amounts shall be paid by the owner of an ambulance service to the department for deposit in the state general fund to be available for legislative appropriation in order to carry out the provisions of this chapter:

1. One hundred dollars upon filing an application for a certificate of necessity.
2. Fifty dollars upon filing an application to amend, transfer or renew a certificate of necessity.
3. For the issuance of an initial certificate of necessity, two hundred dollars for each ambulance proposed to be operated by the ambulance service to which the certificate is granted.
4. An annual regulatory fee of two hundred dollars for each ambulance issued a certificate of registration pursuant to section 36-2212, to be collected at the same time as the certificate of registration fee imposed by section 36-2212.

**36-2241. Required records; inspection by the department**

A. Pursuant to rules adopted by the director, an owner of an ambulance service shall maintain and keep within this state reasonable records, books and other data the director requires to enforce the provisions of this article. These records, books and other data shall not be destroyed for a period of three years after they are recorded. The records, books and other data shall be open to inspection by the department during reasonable office hours if the department is conducting an investigation into the operation of an ambulance service pursuant to section 36-2245.

B. If the director is holding a public rate increase hearing pursuant to section 36-2234, the department may inspect the records, books and other data to verify the truth and accuracy of these documents. The department shall conduct the inspection of these documents for a rate increase hearing only during reasonable office hours and only after giving the service at least one working day's notice.

C. If an audit is required, the department shall accept a certified audit that is performed by an independent auditor at the provider's expense in place of a department audit if the audit:

1. Is conducted in accordance with generally accepted auditing standards.
2. Includes findings regarding the ambulance service's compliance with the schedule of rates and charges approved by the director.
3. Is completed and forwarded to the department in a timely manner.

**ARIZONA STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-118



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 13, 2024

**SUBJECT: STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-118

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System Board (ASRS) seeks to amend one (1) rule in Title 2, Chapter 8, Article 1 related to Application of Interest Rates. Specifically, the ASRS seeks to amend its rules to clarify how the ASRS may deem an account abandoned and how a member may request to have an abandoned account reinstated.

The ASRS indicates, without this rulemaking, members will not have adequate notice about how an account may be deemed abandoned or how a member may have the account reinstated. The ASRS indicates notice of such information is necessary in order to ensure that abandoned accounts are accounted for properly. By promulgating these rules, the ASRS indicates members will have a better understanding of when their account may become abandoned and how to have the account reinstated. Increasing understanding of how the ASRS may reinstate an abandoned account will increase the member's understanding of how to request their account be reinstated and reduce confusion, which will reduce burden on the public.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The ASRS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The ASRS states it needs to amend its rules relating to how the ASRS may deem an account abandoned and how a member may request to have an abandoned account reinstated. The ASRS indicates that the rulemaking will clarify how ASRS reinstates abandoned accounts, thereby increasing understandability of how members' benefits may be affected, thereby increasing the efficiency of the administration. The ASRS states that the rule will have minimal economic impact, if any, because it merely clarifies when the ASRS deems an account as abandoned per statute and how a member may have the abandoned account reinstated. Stakeholders include the ASRS and all members of the ASRS, as well as their beneficiaries. The ASRS indicates it currently has a total membership of approximately 652,864 and 664 employers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS administers abandoned accounts.

6. **What are the economic impacts on stakeholders?**

The ASRS states that the rulemaking does not directly affect state agencies and does not provide any benefits or impose any costs on political subdivisions. They state no businesses, of any size, are directly affected by the rulemaking. The ASRS believes there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The ASRS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The ASRS indicates it received no public comments related to this rulemaking and no one attended the oral proceeding held on September 5, 2023.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The ASRS indicates the proposed amended rules do not require issuance of a permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The ASRS indicates there is no federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the ASRS seeks to amend one (1) rule in Title 2, Chapter 8, Article 1 to clarify how the ASRS may deem an account abandoned and how a member may request to have an abandoned account reinstated.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 8, 2024

Ms. Nicole Sornsins, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System Board**

Dear Ms. Sornsins:

The attached final rule package regarding abandoned accounts is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 18, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Chief Strategy Officer;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Katie Daigneault  
Chief Strategy Officer

**NOTICE OF FINAL RULEMAKING**  
**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

**PREAMBLE**

**1. Articles, Parts, and Sections Affected**

R2-8-118

**Rulemaking Action**

Amend

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

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711 et seq.

**3. The effective date for the rules:**

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
None

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 29 A.A.R. 1787, August 18, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1763, August 18, 2023

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

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System  
3300 N. Central Ave., Ste. 1400  
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-Mail: [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The ASRS needs to amend its rules relating to how the ASRS may deem an account abandoned and how a member may request to have an abandoned account reinstated.

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

No study was reviewed.

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

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies when the ASRS deems an account as abandoned per statute and how a member may have the abandoned account reinstated.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on September 5, 2023.

**12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to**

**Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 1. RETIREMENT SYSTEM**

Section

R2-8-118. Application of Interest Rates

**ARTICLE 1. RETIREMENT SYSTEM**

**R2-8-118. Application of Interest Rates**

A. Application of interest from inception of the ASRS Plan through the present is as follows:

<b>Effective Date of Interest Rate Change</b>	<b>Assumed Actuarial Investment Earnings Rate</b>	<b>Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death</b>
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:

1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.
- D.** A member's retirement account that the ASRS deems abandoned according to A.R.S. § 38-722 shall receive interest at the applicable interest rates according to subsection (A) upon reinstatement of the retirement account.
- E.** For a member whose address and birthdate are on file with the ASRS, the ASRS shall deem a retirement account of a member who is not retired or deceased as abandoned if:
1. The ASRS has not received any contributions for at least 180 days;
  2. The member has reached the required minimum distribution age according to A.R.S. § 38-775; and
  3. The ASRS has sent the member at least three annual notices of the member's responsibility to submit an application for disbursement of benefits according to A.R.S. § 38-775 and the member has not responded to those notices.
- F.** For a member whose address and birthdate are not on file with the ASRS, the ASRS shall deem a retirement account of a member who is not retired or deceased as abandoned if:
1. The ASRS has not received any contributions for at least 180 days; and
  2. The ASRS has posted the member's full name to the abandoned monies section of the ASRS website for at least three consecutive years.

**G.** The ASRS shall deem a retirement account of a deceased member as abandoned if:

1. The ASRS has sent the designated beneficiary at least three annual notices of the beneficiary's responsibility to begin receiving benefits according to A.R.S. § 38-775;  
and
2. The designated beneficiary has not responded to those notices.

**H.** The ASRS shall reinstate an abandoned retirement account if the apparent owner notifies the ASRS that the member would like the retirement account reinstated.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to how the ASRS may deem an account abandoned and how a member may request to have an abandoned account reinstated.

a. The conduct and its frequency of occurrence that the rule is designed to change:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. When the ASRS is unable to locate a member through various statutory methods, it deems an account as abandoned. However, the ASRS shall reinstate any abandoned account if a member upon request.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Without this rulemaking, members will not have adequate notice about how an account may be deemed abandoned or how a member may have the account reinstated. Notice of such information is necessary in order to ensure that abandoned accounts are accounted for properly. By promulgating these rules, members will have a better understanding of when their account may become abandoned and how to have the account reinstated. Increasing understanding of how the ASRS may reinstate an abandoned account will increase the member's understanding of how to request their account be reinstated and reduce confusion, which will reduce burden on the public.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

- c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how the ASRS reinstates abandoned accounts, thereby increasing understandability of how members' benefits may be affected, thereby increasing the efficiency of the administration. Clarifying how the ASRS deems an account abandoned and how a member may request reinstatement will ensure that payment efforts are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the applicable reinstatement requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how accounts become abandoned and reinstated.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies when the ASRS deems an account as abandoned per statute and how a member may have the abandoned account reinstated.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All members of the ASRS, as well as their beneficiaries, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 652,864 and 664 employers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:
  - a. Identification of the small business subject to the rulemaking:  
No businesses, regardless of size, are subject to the rulemaking.
  - b. Administrative and other costs required for compliance with the rulemaking:  
Not applicable.
  - c. Description of methods that may be used to reduce the impact on small businesses:  
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
All ASRS retired members and beneficiaries are directly affected by the rulemaking.  
The effect has been previously described above.
9. Probable effects on state revenues:  
There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:  
The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS administers abandoned accounts.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
April 1, 2023 through June 30, 2023

*Section R2-8-301 numbering corrected and subsection reference under the “Estimated Social Security disability income amount” definition corrected. No other changes have been made to this Chapter since Supp. 22-3 (Supp. 23-2).*

**Questions about these rules? Contact:**

Board: Arizona State Retirement System  
Address: 3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Website: <https://www.azasrs.gov>  
Name: Jessica A.R. Thomas, Rules Writer  
Telephone: (602) 240-2039  
Email: [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**PREFACE**

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

**RULE HISTORY**

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

**AUTHENTICATION OF PDF CODE CHAPTERS**

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

**HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

**ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

**PERSONAL USE/COMMERCIAL USE**

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*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-711 et seq.

**Supp. 23-2**

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. RETIREMENT SYSTEM**

Section		
R2-8-101.	Repealed .....	4
R2-8-102.	Repealed .....	4
R2-8-103.	Repealed .....	4
R2-8-104.	Definitions .....	4
R2-8-105.	Repealed .....	5
R2-8-106.	Reserved .....	5
R2-8-107.	Reserved .....	5
R2-8-108.	Reserved .....	5
R2-8-109.	Reserved .....	5
R2-8-110.	Reserved .....	5
R2-8-111.	Reserved .....	5
R2-8-112.	Reserved .....	5
R2-8-113.	Emergency Expired 5	
R2-8-114.	Emergency Expired .....	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement .....	7
R2-8-118.	Application of Interest Rates .....	8
R2-8-119.	Expired .....	8
R2-8-120.	Repealed .....	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions .....	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	9
Table 1.	Expired .....	9
Table 2.	Expired .....	9
Table 3.	Repealed .....	9
Table 3A.	Expired 10	
Table 3B.	Expired .....	10
Table 4.	Expired 10	

Table 4A.	Repealed .....	10	
Table 4B.	Repealed .....	10	
Table 4C.	Repealed .....	10	
Table 5.	Expired		
	10		
Table 6.	Expired		
	10		
Table 7.	Expired		
	11		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		11
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application		
	12		
R2-8-127.	Re-Retirement Application		
	15		
R2-8-128.	Joint and Survivor Retirement Benefit Options		
	16		
R2-8-129.	Period Certain and Life Annuity Retirement Options		
	.....	16	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant		
	.....	16	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation		
	.....	18	
R2-8-132.	Survivor Benefit Options		
	19		
R2-8-133.	Survivor Benefit Applications .....	20	
Table 1.	Repealed .....	22	
Table 2.	Repealed .....	22	
Table 3.	Repealed .....	22	
Table 4.	Repealed .....	22	
Table 5.	Repealed .....	22	
Table 6.	Repealed .....	23	
Table 7.	Repealed .....	23	
Table 8.	Repealed .....	23	
Table 9.	Repealed .....	23	
Table 10.	Repealed .....	23	
Table 11.	Repealed .....	23	
Exhibit A.	Repealed .....	23	
Exhibit C.	Repealed .....	23	
Exhibit G.	Repealed .....	25	
Exhibit H.	Repealed .....	25	
Exhibit I.	Repealed .....	26	
Exhibit J.	Repealed .....	26	
Exhibit K.	Repealed .....	26	

**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT**

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)*

*(Supp. 17-2).*

*Article 2,*

*consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section			
R2-8-201.	Definitions .....	27	
R2-8-202.	Premium Benefit Eligibility and Benefit Determination		28
R2-8-203.	Payment of Premium Benefit .....	28	
R2-8-204.	Premium Benefit Calculation .....	29	
R2-8-205.	Premium Benefit Documentation .....	29	
R2-8-206.	Six-Month Reimbursement Program .....	29	
R2-8-207.	Optional Premium Benefit .....	30	

**ARTICLE 3. LONG-TERM DISABILITY**

*Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).*

Section			
R2-8-301.	Definitions .....	31	
R2-8-302.	Application for Long-Term Disability Benefit .	31	
R2-8-303.	Long-Term Disability Calculation .....	31	
R2-8-304.	Payment of Long-Term Disability Benefit ...	32	
R2-8-305.	Social Security Disability Appeal .....	32	
R2-8-306.	Approval of Social Security Disability .....	32	

**ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	
	32	
R2-8-402.	General Procedures	
	32	
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	32
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	
	.....	33
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	33

**ARTICLE 5. PURCHASING SERVICE CREDIT**

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	
	34	
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	35
R2-8-503.	Requirements Applicable to All Service Credit Purchases	36
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	
	.....	36
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	36
R2-8-506.	Cost Calculation for Purchasing Service Credit	36
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	36
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	
	.....	37
R2-8-509.	Required Documentation and Calculations for Military Service Credit	
	.....	37
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	
	.....	38
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	
	.....	39
R2-8-512.	Purchasing Service Credit by Check, Cashier’s Check, or Money Order	
	.....	39
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	
	39	
R2-8-513.01.	Irrevocable PDA and Transfer of Employment to a Different Employer	
	.....	41
R2-8-513.02.	Termination Date	
	41	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	.....	41
R2-8-515.	Repealed .....	42
R2-8-516.	Expired .....	42
R2-8-517.	Expired .....	42
R2-8-518.	Repealed .....	42
R2-8-519.	Purchasing Service Credit by Termination Pay	
	43	
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	.....	43
R2-8-521.	Adjustment of Errors	
	44	

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	44	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	.....	44
R2-8-603.	Petition for Rulemaking	
	44	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	.....	44
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	.....	44
R2-8-606.	Oral Proceedings	
	45	
R2-8-607.	Petition for Delayed Effective Date	
	45	

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section		
R2-8-701.	Definitions	
	45	
R2-8-702.	General Information	
	45	
R2-8-703.	Employer’s Discovery of Error	
	46	
R2-8-704.	Member’s Discovery of Error	
	46	
R2-8-705.	ASRS’ Discovery of Error	
	46	
R2-8-706.	Determination of Contributions Not Withheld	
	46	
R2-8-707.	Submission of Payment	
	47	
R2-8-708.	Expired .....	47
R2-8-709.	Repealed .....	47

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section		
R2-8-801.	Definitions .....	47
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	47
R2-8-803.	Reimbursement of Overpayments	
	48	
R2-8-804.	Collection of Overpayments from Forfeiture	
	48	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	48
R2-8-806.	Collection of Overpayments from Survivor Benefit	
	.....	49
R2-8-807.	Collection of Overpayments from LTD Benefit	
	49	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	49
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	49
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	49

**ARTICLE 9. COMPENSATION**

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section		
R2-8-901.	Definitions .....	49
R2-8-902.	Remitting Contributions .....	49
R2-8-903.	Accrual of Credited Service .....	50
R2-8-904.	Compensation from An Additional Employer .	50
R2-8-905.	Expired .....	50

**ARTICLE 10. MEMBERSHIP**

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section		
R2-8-1001.	Definitions	
	50	
R2-8-1002.	Employee Membership	
	50	
R2-8-1003.	Charter School Employer Membership .....	51
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	.....	52
R2-8-1005.	Employer Reporting	

R2-8-1006.	53	Prior Service Purchase Cost for New Employers
53		

**ARTICLE 11. TRANSFER OF SERVICE CREDIT**

Section		
R2-8-1101.	Definitions	
	54	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	54
R2-8-1103.	Transferring Service to Other Retirement Plans	
	.....	55

## ARTICLE 1. RETIREMENT SYSTEM

### R2-8-101. Repealed

#### Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-102. Repealed

#### Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-103. Repealed

#### Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
  - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
  - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
  - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
  - a. The requirements of A.R.S. § 38-773(C);
  - b. The date of the member and alternate payee's marriage;
  - c. The date of divorce or the date in which the community property interest ended;
  - d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
  - e. How the member's ASRS benefits should be split in specific amounts for the following possible events:
    - i. The member's retirement;
    - ii. Return of contributions and termination of membership according to R2-8-115; and
    - iii. The death of the member prior to retirement;
  - f. Whether the member may transfer all ASRS service credit to another retirement system;
  - g. Whether the member is required to maintain the alternate payee as the member's beneficiary;
  - h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
  - i. The judge's dated signature.
10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended

by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;
  - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
  - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
  - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
  - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
  - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

- j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
  - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
  - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
  - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
- a. The type of eligible retirement plan; and
  - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  - 6. The Employer's name and telephone number;
  - 7. The Employer Number;
  - 8. The name and title of the authorized Employer representative;
  - 9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

#### **Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-116. Alternate Contribution Rate**

- A. For purposes of this Section, the following definitions apply:
- 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  - 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  - 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  - 4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest	Assumed Actuarial Investment	Interest Rate Used to Determine Return of Contributions Upon
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Rate Change	Earnings Rate	Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  - 1. The interest and investment return rate assumptions are determined by the Board.
  - 2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**Table 1. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614,

effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former

Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3).

Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and

- b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
3. "Compensation" means the same as in A.R.S. § 38-711(7).
4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
  - a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
  1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

#### **Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

#### **R2-8-126. Retirement Application**

- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
  1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  3. "Applicable retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or
    - b. The date a member re-retires from the ASRS after returning to active membership.
  4. "Conservator" means the same as in A.R.S. § 14-7651.
  5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  6. "Legal documentation" means:
    - a. One document issued from a United States government entity; or
    - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
  7. "LTD" means the same as in R2-8-301.
  8. "Irrevocable PDA" means the same as in R2-8-501.
  9. "On File" means the same as in R2-8-115.
  10. "Original retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. The member's current mailing address; if not On File with ASRS;
  5. The member's date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary's full name;
    - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary's date of birth;
    - d. The beneficiary's relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
    - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member's spouse's full name; and
    - d. The member's spouse's notarized signature;
  12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  1. The type of account and account number to which the member is electing to roll over;
  2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
  - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  - 2. The member's total salary paid during their last fiscal year;
  - 3. The member's compensation for the last pay period;
  - 4. The name and title of the authorized Employer representative;
  - 5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  - 1. The member's full name;
  - 2. The member's bank account routing number;
  - 3. The member's bank account number; and
  - 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

#### Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D)

effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-127. Re-Retirement Application**

- A. The definitions in R2-8-126 apply to this Section.
- B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
  1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re- retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

#### **R2-8-128. Joint and Survivor Retirement Benefit Options**

- A. The definitions in R2-8-126 apply to this Section.
- B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-129. Period Certain and Life Annuity Retirement Options**

- A. The definitions in R2-8-126 apply to this Section.

- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
  - a. Full name;
  - b. Social Security number, if the contingent annuitant is a U.S. citizen;
  - c. Date of birth; and
  - d. Legal relationship to the member.
- 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
  - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
- 8. Whether the spouse's consent is not required because:
  - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.
- Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

- A. The definitions in R2-8-126 apply to this Section.
- B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
  - 1. The Member's full name and one or more of the following information:
    - a. The Member's Social Security number or U.S. Tax Identification number; or
    - b. The Member's address; or
    - c. The Member's date of birth;
  - 2. The following information for the beneficiary:
    - a. The full name of the person or entity the member is designating as beneficiary;
    - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
    - c. The percentage of the benefit the member is allocating to the beneficiary; and
  - 3. The member's notarized signature.
- C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E. Effective July 1, 2013, a married member:
  - 1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary;
  - 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate contingent annuitant; or
    - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
  - 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
  - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
  2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** A DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:
          - (a) They are exempt from backup withholding, or
          - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
          - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
          - (3) They are a legal resident of the United States, unless they are an estate or trust.
        - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
        - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan

- will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or
      - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
    - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
    - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
    - f. If there are other surviving heirs, then the name and relationship of each surviving heir;

- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496,









#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

#### Exhibit M, Table 6. Repealed

#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

### ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

#### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 04-3).

07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  - 1. The actual cost of the Coverage premium; or
  - 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

- a. First and last name;
  - b. Social Security number or U.S. Tax Identification number;
  - c. Date of birth; and
  - d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
  - a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
  - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

### **ARTICLE 3. LONG-TERM DISABILITY**

#### **R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
3. "Estimated Social Security disability income amount" means the same as in R2-8-801(1).
4. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
5. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
6. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
7. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Numbering corrected and subsection reference under the "Estimated Social Security disability income amount" definition corrected (Supp. 23-2).

#### **R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

#### **R2-8-303. Long-Term Disability Calculation**

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

#### **R2-8-304. Payment of Long-Term Disability Benefit**

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.
- D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

#### **R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

### **ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

#### **R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

#### R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
  - 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  - 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
  - 1. The decision the agency is making in response to the letter of appeal; and
  - 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
  - 1. The agency action the ASRS is taking in response to the letter of appeal; and
  - 2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
  - 1. The name and mailing address of the member, employer, or other person filing the Request;
  - 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  - 3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
  - 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  - 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I. The Board has delegated to each Health Plan Vendor the authority to:
  - 1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  - 2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  - 3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  - 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

### **ARTICLE 5. PURCHASING SERVICE CREDIT**

#### **R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;

- b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
  19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
  20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
  21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
  22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
  23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
  24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
  25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
    - a. After accepting an offer to work for a new Employer;
    - b. While working as an active member for a different Employer; or
    - c. Before returning to work with any Employer within 120 days of terminating employment.
  26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
  27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
  28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
  1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
  1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
  1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
  1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
  - 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  - 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
  - 1. Leave of Absence Service;
  - 2. Military Service;
  - 3. Forfeited Service; and
  - 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
  - 1. The amount the Eligible Member wants to apply, and
  - 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
  - 1. Leave of Absence Service;
  - 2. Military Service; and
  - 3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

- A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
  - 1. One year of credited service in any plan year, or
  - 2. One month of credited service in any one calendar month.
- B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.
- C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
  - 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  - 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
  - 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and

2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
  1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
  1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
  1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
  - 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
  - 1. The name and mailing address of the Other Public Service employer;
  - 2. The position the Eligible Member held while working for the Other Public Service employer;
  - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or

- c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
  - C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
  - 1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
  - 2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
    - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
    - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
    - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
      - i. Terminating employment;
      - ii. Terminating LTD without returning to work with an Employer; or
      - iii. The effective ASRS retirement date;
    - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
    - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
    - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
    - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
  - 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;

- c. Understands that the election to use Termination Pay is binding and irrevocable;
  - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
  - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
  - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
  - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
- 1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  - 2. Limit the payroll deduction time period to a maximum of 520 payments; and
  - 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
- 1. Irrevocable PDA is completed;
  - 2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  - 3. Eligible Member terminates all ASRS employment without transferring employment; or
  - 4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
- 1. By any method specified in R2-8-512;
  - 2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  - 3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

- 1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
- 2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
    - c. The ASRS shall not accept the following fund types:
      - i. Roth funds;
      - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      - iii. Inherited IRA;
      - iv. Coverdale Education Savings Account funds;
      - v. Hardship distributions;
      - vi. Funds not includable in gross income;
      - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      - ix. One of a series of substantially equal periodic payments made for 10 years or more;
      - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
    - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
    - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
    - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
    - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
  - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
    1. The Eligible Member's full name;
    2. The last 4 digits of the Eligible Member's Social Security number;
    3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
    4. The Authorized Representative's name and title;
    5. The Authorized Representative's telephone number; and
    6. Certification by the Authorized Representative's dated signature that:
      - a. The plan is either:
        - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
        - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
        - iii. An annuity contract described in IRC § 403(b); or
        - iv. An IRA described in A.R.S. § 38-747(H)(3);
      - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
      - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and

- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
  - 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  - 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  - 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
  - 1. The name and current address of the person submitting the petition,
  - 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  - 3. The signature of the person submitting the petition, and
  - 4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
  - 1. The name and current address of the person submitting the objection;
  - 2. Identification of the rule;
  - 3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  - 4. The signature of the person submitting the objection; and
  - 5. The date the person signs the objection.
- B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
  - 1. The name and current address of the person making the request;
  - 2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  - 3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
  - 1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  - 2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  - 3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  - 4. Explain the background and general content of the proposed rulemaking;
  - 5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  - 6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
  - 1. Name and current address of the person submitting the petition;
  - 2. Identification of the proposed rule;
  - 3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  - 4. Reason why the public interest will not be harmed by the delayed effective date;
  - 5. Signature of the person submitting the petition; and

6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B.** The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C.** The ASRS shall not waive payment of contributions or interest owed under this Article.
- D.** If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
  
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A.** If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
  - c. The member's position title during the date range listed in subsection (A)(2)(b);
  - d. Whether the member was Engaged to Work for the Employer; and
  - e. Dated signature of the member certifying the member understands:
    - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
    - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, Employer and the member, an invoice with the following:
  - 1. The amount of Eligible Service for which contributions were not withheld,
  - 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  - 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  - 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  - 5. The dollar amount of contributions to be paid to the ASRS by the member.
- F.** The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022),

with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-708. Expired**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

**R2-8-801. Definitions**

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A.** Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B.** A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C.** An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- D.** If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- E.** A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- F.** If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  - 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  - 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  - 1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  - 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  - 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  - 1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  - 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION**

**R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
  - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired**

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

## ARTICLE 10. MEMBERSHIP

### R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

#### Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

### R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.

- J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

- A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the

political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

- C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1005. Employer Reporting**

- A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;

7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
  1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1006. Prior Service Purchase Cost for New Employers**

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
  1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
  1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.
- G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.
- H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

### **ARTICLE 11. TRANSFER OF SERVICE CREDIT**

#### **R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.

5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
  1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
  - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  - 2. The Member’s Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  - 1. The member’s full name;
  - 2. The last four digits of the member’s Social Security number;
  - 3. The name of the Other Retirement Plan; and
  - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  - 1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
  - 2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  - 1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  - 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.
- H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee’s notarized signature.

**Historical Note**

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

### 38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
  - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
  - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
  - (iv) Payments for allowances.
  - (v) Reimbursements for employee business expenses or employee personal expenses.
  - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
  - (vii) Payments made in lieu of any employer-paid insurance coverage.
  - (viii) Workers' compensation, unemployment compensation payments and disability payments.
  - (ix) Merit awards pursuant to section 38-613.
  - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
  - (xi) Payments made in the form of goods or services in lieu of gross wages.
  - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
  - (xiii) Payments in excess of the section 401(a)(17) of the internal revenue code limits established in section 38-746.
  - (xiv) Payments for any other employment benefit.
  - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
  - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
  - (c) Means any person receiving a benefit under ASRS.
  - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
  - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
  - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
    - (i) Is not otherwise an employee of an employer.
    - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
    - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

**38-712. ASRS purpose: trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.
2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.
3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.
4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming a person with a disability.
5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.

B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

38-713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.

2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

- 1. A portfolio manager acting in a fiduciary capacity.
- 2. A securities analyst.
- 3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
- 4. A chartered financial analyst in good standing as determined by the CFA institute.
- 5. A professor at the university level teaching economics or investment related subjects.
- 6. An economist.
- 7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

- 1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.
- 2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year not later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The

report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

K. In determining the past service funding period, the board shall seek to improve the funded status whenever the trust fund established by section 38-712 is less than one hundred percent funded.

**38-715. Director: powers and duties**

- A. The board shall appoint a director. The director shall serve at the pleasure of the board.
- B. The director shall appoint a deputy director and assistant directors with the approval of the board.
- C. The director, under the supervision of the board, shall:
  1. Administer this article.
  2. Be responsible for the recruitment, hiring and day-to-day management of employees.
  3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.
  4. Prescribe procedures to be followed by employers for remitting data and monies to ASRS and for receiving data and monies from ASRS.

5. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account, the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

4. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. For current or prospective employees of ASRS, the director, under the supervision of the board, may:

1. Conduct criminal records checks. The director may require a current or prospective employee to submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. Conduct credit checks for accounting, investment and other finance-related positions. The director shall establish a policy for conducting credit checks on a current employee that includes the method for determining when a credit check may be conducted, retaining records relating to the reason for the credit check and notifying an employee of the credit check and the result of the credit check.

F. The director and all persons employed by the director are subject to section 38-611 and title 41, chapter 4, article 4.

G. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following ASRS positions:

1. Director.
2. Deputy director.
3. Chief investment officer.
4. Fiduciary or investment counsel.

**38-716. Employers' responsibilities under the system**

In addition to any other requirements of this article or article 2.1, 7 or 8 of this chapter, an employer of a member shall:

1. Cooperate and collaborate with ASRS and follow all ASRS procedures to ensure the proper enrollment of members in the system.
2. Submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to make eligibility determinations and for the proper administration of the plan.
3. Attend the ASRS annual training conference.

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.

**38-718. Investment managers: general powers and duties: investment of monies: limitations**

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member

nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

### 38-718. Investment managers; general powers and duties; investment of monies; limitations

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

**38-719. Interest paid to members and employers**

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

**38-720. ASRS depository**

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

**38-721. Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.

3. Actuarial consulting fees.

4. Retiree payroll.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection E, paragraph 1 and subsection I, paragraphs 2 and 3, section 38-718, subsection D, paragraph 5 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

**38-722. Abandoned monies: disposition**

A. Except as otherwise provided in this section, the trust fund established by section 38-712 is exempt from title 44, chapter 3.

B. Monies in the ASRS trust fund and the LTD trust fund established by section 38-797.02 are presumed abandoned if the apparent owner, as defined in section 44-301, has not communicated in writing with ASRS and has not otherwise indicated an interest in the monies for the three year period following the required beginning date of distributions pursuant to section 38-775.

C. At the time monies are presumed abandoned pursuant to subsection B of this section, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.

D. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.

E. Before monies are presumed abandoned, ASRS shall attempt to contact the apparent owner in writing. If the apparent owner is a member, beginning five years before the apparent owner's required beginning date of distributions pursuant to section 38-775 and for three years after that date, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a retirement benefit. If the apparent owner is a beneficiary, beginning in the calendar year containing the fifth anniversary of the member's death and for three years, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a survivor benefit. If this notice is returned by the postal authority as undeliverable, ASRS shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with ASRS, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails and the base amount of the unclaimed monies is three hundred dollars or more, ASRS may use the services of a people search service. A fee imposed by the people search service shall not be deducted from the member's benefit and these expenditures are continuously appropriated and shall be paid from the administration account established pursuant to section 38-721 in the amount deemed necessary by the board.

F. If at any time an owner, as defined in section 44-301, establishes an entitlement in the monies, ASRS shall withdraw the monies from either the ASRS trust fund or the LTD trust fund, whichever is applicable, and pay the owner the monies or benefit to which the owner is entitled pursuant to this article or article 2.1 of this chapter, including interest at a rate determined by ASRS, if applicable.

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-724. Surrender of property subject to levy; authority to release levy and return property; definitions

A. Any person in possession of, or obligated with respect to, property subject to levy on which a levy has been made, on request of ASRS, shall surrender the property or discharge the obligation to

ASRS, except the part of the property that is, at the time of the request, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property subject to levy, on request by ASRS, is liable in person and estate to this state in a sum equal to the value of the property not so surrendered, but not exceeding the amount of debt for the collection of which the levy has been made, with costs and interest on the sum at the interest rate determined by the board from the date of the levy or, in the case of a levy described in section 38-723, subsection E, from the date the person would otherwise have been obligated to pay the amounts to the debtor. Any amount, other than costs, recovered under this subsection shall be credited against the debt for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property subject to levy on which a levy has been made who, on request by ASRS, surrenders the property or discharges the obligation to ASRS is discharged from any obligation or liability to the debtor with respect to the property arising from the surrender or payment.

D. ASRS may release a levy on all or part of property levied on. The release shall not operate to prevent any subsequent levy.

E. If ASRS determines that property has been wrongfully levied on, ASRS shall return the specific property levied on or an amount of money equal to the value of the property levied on.

F. For the purposes of this section:

1. "Levy" includes the power of distraint and seizure by any means.

2. "Person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, or any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property or to discharge the obligation.

#### 38-725. Financial institutions data match; prohibited disclosure; fee; definition

A. ASRS may enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist ASRS in the collection of monies owed. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. The data exchanges shall include the name, address of record, social security number and any other identifying information for each person who maintains an account at the institution and who owes money as identified by ASRS by name and social security number.

C. ASRS or its agent may disclose a debtor's financial record under this section only in order to enforce the collection of the money the debtor owes to ASRS.

D. ASRS may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

E. For the purposes of this section "financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

**38-727. Eligibility; options**

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this subsection.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. A person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days after employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

9. The following are ineligible for membership in ASRS:

(a) A person who performs services in a hospital, home or other institution as an inmate or patient at the hospital, home or other institution.

(b) A person who performs agricultural labor services, as defined in section 210 of the social security act.

(c) A person who is a nonresident alien temporarily residing in the United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are performed.

(d) A person who performs services for a school, college or university in this state at which the person is enrolled as a student, as defined by the employing institution. The employing institution

shall maintain an appeal process for a person who disagrees with the employing institution's determination that the person is a student and not eligible for membership in ASRS.

(e) A person who performs services under a program designed to relieve the person from unemployment.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. An elected official, as defined in section 38-831, who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability, if the elected official's employer is a participating employer under this article and the elected official is eligible for ASRS service credit for the elected official's service.

#### 38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amount equal to the present value required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan using the actuarial assumptions that are approved by the board. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

J. Notwithstanding any other law, an employee of a political subdivision who was previously a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that public employee retirement system for any period of employment is ineligible to receive service credit from ASRS for the same period of employment.

### 38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The transfer shall be made pursuant to section 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

#### **38-735. Payment of contributions: recovery of delinquent payments**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

#### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions; prepayment; definitions

A. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.

Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1. 401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38-712 or a section 115 trust.

2. ASRS shall determine the following options available to the employer:

(a) The amortization time periods.

(b) The frequency and dates that prepayments can be made.

(c) The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d) Any other options or obligations that the employer may have when entering into this written agreement.

3. The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4. The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38-718.
  5. 401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38-735.
  6. The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.
  7. ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.
  8. Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:
    - (a) In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
    - (b) After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
  9. After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.
  10. If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.
  11. Assets transferred in or out of or held in the ASRS trust fund established by section 38-712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.
  12. The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.
  13. If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax-exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.
- E. In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:
1. Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2. Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F. For the purposes of this section:

1. "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2. "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions.

### 38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit or, if the request is made within one year after the date of overpayment, shall return the contributions to the employer. ASRS may not pay an employer earnings attributable to the excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit. On receipt of an employer credit or return of contributions pursuant to this subsection, the employer shall return any member portion of the returned contributions to the member.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by

ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

E. Notwithstanding any other law, an employer may correct a contributions error pursuant to subsection B of this section by making payment adjustments through the employer's payroll reporting for the contributions that were not submitted if both of the following apply:

1. The adjustment is made within the same fiscal year that the contributions were due to ASRS.

2. The employer obtains written consent from the employee to make the adjustment to the employee's paycheck.

F. Notwithstanding any other law, if an employer pays less than the correct amount of employer or member contributions into ASRS, the correct amount of member contributions may not be paid to ASRS after the death of the member.

### 38-739. Credited service

- A. A member shall not earn more than one year of credited service in any fiscal year.
- B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.
- C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.
- D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.
- E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.
- F. The following years of service are excluded from credited service under this article:
  - 1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.
  - 2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

#### 38-739.01. Credited service retention

Consistent with the compliance statement issued by the United States internal revenue service, an employee who is employed with an ASRS employer in a position that was exempt from ASRS membership because the position was not included in agreements providing for the employee's coverage under the federal old-age and survivors insurance system but on whose behalf the employer has remitted ASRS contributions shall retain credited service for the period of employment for which the employer remitted ASRS contributions on the employee's behalf.

### 38-740. Return of contributions

- A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
  - 1. If the member has less than five years of credited service, ASRS shall disburse all of the member's contributions.
  - 2. If a member has five or more years of credited service, ASRS shall disburse the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738,

subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five percent.
- (b) 6.0 to 6.9 years of credited service, forty percent.
- (c) 7.0 to 7.9 years of credited service, fifty-five percent.
- (d) 8.0 to 8.9 years of credited service, seventy percent.
- (e) 9.0 to 9.9 years of credited service, eighty-five percent.
- (f) 10.0 or more years of credited service, one hundred percent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If ASRS has disbursed an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If ASRS disburses more than the amount due to a member or an alternate payee pursuant to this section, the person who received the overpayment shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

#### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, ASRS shall disburse benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

#### 38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

#### 38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is

derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

**38-744. Leave of absence: credit for leave without pay**

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

**38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
3. Volunteers or is ordered into active military service of the United States as part of a military call-up.
4. One of the following occurs:
  - (a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.
  - (b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

#### 38-746. Compensation limitation: adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

#### 38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) \$40,000 or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred percent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any

other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution from one or more:

- (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

- (b) Annuity contracts described in section 403(b) of the internal revenue code.

- (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

3. Accepting from a member a direct transfer from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code of an amount that would otherwise be eligible to be rolled over to ASRS under the provisions of section 408(d)(3)(A)(ii) of the internal revenue code if the amount had been received by the member and would have otherwise been includible in the member's gross income but for the direct transfer.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.
3. "Defined contribution plan" has the same meaning prescribed in section 38-769.
4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.
5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.
6. "Limitation year" has the same meaning prescribed in section 38-769.
7. "Participating employer" means an employer that participates in ASRS.
8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

**38-748. Employer payments for ineligible contributions; definitions**

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS shall provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

**38-749. Employer termination incentive program; employer payment of actuarial cost; definition**

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

### 38-750. Transfers out of the system

A. If an employee has made an irrevocable election pursuant to section 38-747, subsection B or D and transfers participation to another defined benefit retirement system or plan of this state without a termination of employment, within ninety days after the date of the transfer, ASRS shall transfer to the subsequent defined benefit retirement system or plan the amount the employee paid for the purchase of the credited service plus interest as determined by ASRS.

B. If the assets transferred from ASRS are less than the cost of the benefits accrued relative to the credited service as calculated pursuant to section 38-922, subsection B, paragraph 2, and unless a law otherwise provides, the employee shall elect either to pay the difference to the subsequent defined benefit retirement system or plan or accept a reduced amount of service credits. If the employee elects to pay the difference, the amount paid shall be added to the employee's accumulated contribution account balance. If the employee elects to accept a reduced amount of service credits, the amount of service credits granted shall be equal to the amount of service credits purchased multiplied by the ratio of the amount of assets transferred to the amount calculated pursuant to section 38-922, subsection B, paragraph 2.

C. The transferred employee and the employer shall complete the terms of the irrevocable election by making payments to ASRS.

D. If the employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, on termination of employment the employee shall elect to have ASRS:

1. Promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to elect to have the assets transferred within thirty days after termination of employment, the employee is deemed to have made an election as prescribed in paragraph 2.

2. On written request by the employee, promptly return to the employee the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If no application is received by ASRS within sixty days after termination of employment, ASRS shall issue the payment directly to the employee.

E. If the employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, after termination of employment the employee may elect within thirty days of termination of employment to have ASRS promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to make the election under this subsection, ASRS shall deem the employee as an inactive member of ASRS.

F. If an employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is

receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is eligible to transfer to the retirement system or plan, but the election to transfer terminates the benefit from ASRS on the effective date of the transfer.

G. If an employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is not eligible to transfer to another retirement system or plan.

**38-751. Nonparticipatory employer liability allocation; exemption; definitions**

A. ASRS shall establish a separate fund for an employer, other than a charter school, that is no longer participating in ASRS as a result of any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state, dissolves.
3. Through legislative action, the employer is no longer enrolling new employees in ASRS or no longer contributing to ASRS on behalf of current employees or groups of employees who otherwise would be eligible for ASRS membership.

B. For a nonparticipating employer described in subsection A of this section, ASRS shall allocate an actuarial accrued liability and a designated asset amount to the nonparticipating employer's separate fund as of the nonparticipation date, which shall be calculated as follows:

1. The actuarial accrued liability shall equal the sum of the plan employer actuarial accrued liability and the LTD program employer actuarial accrued liability. Actuarial accrued liability shall be calculated based on the same actuarial assumptions and methods as the actuarial valuation performed immediately preceding the nonparticipating employer's nonparticipation date.

2. The designated asset amount shall equal the sum of the following:

- (a) The plan employer actuarial accrued liability multiplied by the plan funded percentage.
- (b) The LTD program employer actuarial accrued liability multiplied by the LTD program funded percentage.

C. All monies and securities transferred to the nonparticipating employer's separate fund shall be credited to that fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes. ASRS shall make all decisions regarding the nonparticipating employer's separate fund.

D. After establishing the nonparticipating employer's separate fund, the fund shall be adjusted for all of the following:

1. All contributions made by employees of the nonparticipating employer.
2. All contributions made by the nonparticipating employer.

3. All plan, all LTD program and any other benefits paid to the nonparticipating employer's members who are active, inactive, retired or on long-term disability.

4. All plan, all LTD program and any other benefits paid to the survivors of the nonparticipating employer's members.

5. The applicable share of the investment gains and losses.

6. Expenses associated with the administration of the nonparticipating employer's separate fund, including any administrative, development, actuarial, legal, custodial and investment management costs associated with the fund. These expenses shall be paid directly by the nonparticipating employer or included in the employer's liability for the purposes of determining the employer's contribution rate.

E. After establishing the nonparticipating employer's separate fund, the nonparticipating employer and any employees of that employer who are enrolled in ASRS shall continue to have contribution requirements to the nonparticipating employer's separate fund. The contribution requirements shall be calculated as follows:

1. All employees of the nonparticipating employer who are enrolled in ASRS shall continue to make contributions through payroll deductions based on the contribution rate determined for the employees of participating employers of ASRS pursuant to section 38-736.

2. The nonparticipating employer shall continue to make contributions through lump sum payments in accordance with section 38-735, equal to the sum of:

(a) Contributions owed through payroll deductions based on the contribution rate determined for participating employers pursuant to section 38-737.

(b) The amount required to amortize the past service funding requirement in the nonparticipating employer's separate fund over a period that is determined by the board and that is consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the nonparticipating employer's separate fund is less than one hundred percent funded.

F. The ASRS actuary shall determine the actuarial assumptions used to determine the contribution requirements for the nonparticipating employer under subsection E of this section. Notwithstanding section 38-737, the contribution for the nonparticipating employer may not be determined as a percentage of compensation due to the anticipated decline of compensation for employees of the nonparticipating employer participating in ASRS. The nonparticipating employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS at a rate that is consistent with the rate paid by the participating employers. Each fiscal year, amounts that are not remitted through payroll contributions pursuant to this section shall be invoiced to the employer and shall be paid within the same fiscal year the nonparticipating employer is invoiced.

G. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

H. For the purposes of calculating an employer's liability under this section, members who are active, inactive, retired or on long-term disability are considered employees of the nonparticipating employer

if the member's most recent employer was the nonparticipating employer as of the nonparticipation date.

I. This section does not apply to an employer whose existence was terminated by legislative action or otherwise became a nonparticipating employer as described in subsection A of this section on or before January 1, 2013.

J. For the purposes of this section:

1. "LTD program" means the program established by article 2.1 of this chapter.

2. "LTD program employer actuarial accrued liability" means the actuarial accrued liability for the employer's active and inactive members and the open LTD program claims for the employees of the employer as of the nonparticipation date.

3. "LTD program funded percentage" means the total market value of LTD program assets divided by the total LTD program actuarial accrued liabilities, as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the LTD program funded percentage is one hundred percent.

4. "Nonparticipation date" means the date on which the employer is no longer participating in ASRS.

5. "Plan" means the retirement plan established by this article.

6. "Plan employer actuarial accrued liability" means the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for the employer's active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date.

7. "Plan funded percentage" means the plan's total market value of assets divided by the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for all active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the plan funded percentage is one hundred percent.

**38-755. Member's account information: beneficiary designation: spousal consent: confidentiality**

A. ASRS shall make information concerning a member's account accessible to the member in written or electronic form. This information shall include the member's current account balance, contact information, beneficiary election, estimated retirement date and estimated benefit amount.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty percent of the member's account, unless naming or maintaining the current spouse as a beneficiary violates another law, an existing contract or a court order. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. In order to protect a member's identity from fraud, abuse, theft or civil or criminal activity, information about a member is not subject to inspection pursuant to title 39, chapter 1, article 2, except that the following information about a member is subject to inspection:

1. The member's name.
2. Whether the member is an active member as defined in section 38-711, an inactive member as defined in section 38-711 or a retired member as defined in section 38-711.
3. The member's current or most recent employer.
4. For a retired member, the average monthly compensation, as defined in section 38-711, used to calculate the member's retirement benefit.
5. The credited service as defined in section 38-711 on account for an active or inactive member or the credited service used to calculate the retirement benefit for a retired member.
6. The gross pension amount actually paid to a retired member.
7. The most recent retirement date.
8. The current account balance for an active or inactive member.
9. The gross long-term disability program benefit actually paid to a member with a disability pursuant to article 2.1 of this chapter.
10. The amount paid to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
11. The amount of credited service purchased pursuant to section 38-743, 38-744 or 38-745.

E. ASRS shall not permit any unredacted record to be inspected that contains a member's social security number, bank account information, address, telephone number, e-mail address, medical records, health insurance information, beneficiary or survivor information or disability information or any information that is protected by any federal or state law.

**38-756. [Outreach education program](#)**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.
7. The development of a creative promotional program using available media outlets.

C. ASRS shall present, either in person or through the use of electronic means, the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

#### 38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. Except as provided in section 13-713, a member's right to the member's normal retirement benefit as described in subsection B of this section is nonforfeitable by an employer or ASRS on attainment of the member's normal retirement date.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a straight life annuity that equals the result of paragraph 1 of this subsection multiplied by paragraph 2 of this subsection when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 percent if the member does not have more than 19.99 years of credited service.

(b) 2.15 percent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 percent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 percent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

#### 38-758. Early retirement

A. A member who has attained age fifty, who has terminated employment with all employers and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. For a member whose membership in ASRS commenced before July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three percent for each unit of one or fraction of one by which the sum is less than eighty.

C. For a member whose membership in ASRS commenced on or after July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 at the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this subsection for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixty-second birthday if the member has at least ten years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

#### 38-759. Late retirement; definition

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the member's required beginning date.

C. For the purposes of this section, "required beginning date" has the same meaning prescribed in section 38-775.

#### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor life annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's

effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the life annuity of the member under the same joint and survivor life annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted life annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor life annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor life annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

#### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection E.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

#### **38-763. Survivor benefits after retirement**

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits distributed by ASRS. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

#### **38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. All retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. Except as provided in subsection D of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement

benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

D. The board may pay the entire retirement benefit in a lump sum pursuant to subsection C of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

E. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783 but is not eligible for a benefit increase pursuant to section 38-767.

F. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

G. Notwithstanding subsection H of this section, a member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

H. A member may elect to make changes to a retirement application before the member's retirement date. A member may exercise a onetime election to make changes to the retirement application within sixty days after the member's retirement date. The member may not change the member's retirement date, and any changes made to the retirement application are retroactive to the member's retirement date.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

#### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### **38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.
2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A retired member whose retirement benefits have been suspended pursuant to subsection A of this section shall repay ASRS any retirement benefits received by the member from the date ASRS notifies the member in writing that the member's employment resulted in active membership in ASRS pursuant to subsection A of this section, from the date ASRS determines that the member knew or should have known that the member's employment resulted in membership in ASRS pursuant to subsection A of this section or for any other period that approximates the duration of the violation, as determined by ASRS.

C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

- (a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

- (b) Allows a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

E. A retired member who returns to work pursuant to subsection D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. An employer that engaged the retired member to work pursuant to this section shall pay to ASRS an amount equal to the rate established by the actuary pursuant to section 38-766.02, subsection B for the period starting with the first day the retired member began working after retirement through the earlier of:

1. The date the member terminates employment.
2. The date the member resumes active membership pursuant to subsection A of this section and the member and employer are required to make contributions pursuant to section 38-736, 38-737 or 38-738.

**38-766.01. Retired members; return to work**

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated direct employment with an employer at least three hundred sixty-five consecutive days before returning to work.
3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. Notwithstanding section 38-766 and subsection A of this section, at a retired member's election, a retired member may return to work as a state elected official who is subject to term limits and still be eligible to receive retirement benefits.

C. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

D. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days after returning to work.

E. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

F. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

**38-766.02. Retired members; return to work; employer contribution payments; exception; definitions**

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work with an ASRS employer in any capacity in a position ordinarily filled by an employee of the employer or in a position that is similar in duties and responsibilities to that of a position ordinarily filled by an employee of the employer. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two percent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. An employer is not required to pay contributions at an alternate contribution rate on behalf of a retired member under subsection A of this section if the retired member returns to work with the employer in a position that is currently filled by an employee of the employer who is an active member and for which the employer is currently required to pay and is paying contributions on behalf of the active member in that same position pursuant to sections 38-736 and 38-737. An employer may pay contributions at an alternate contribution rate for a retired member who meets the requirements for an exemption under this subsection.

G. For contributions made pursuant to subsection F of this section beginning July 1, 2019, if ASRS and the employer determine that the alternate contribution rate does not apply to a retired member who returns to work for whom the employer has paid contributions at the alternate contribution rate,

the employer may request an employer credit, not including interest, for those contributions within ninety days after the end of the fiscal year in which the contributions were paid. If ASRS determines that an employer credit is not feasible, ASRS shall issue a refund to an employer in a form determined by ASRS.

H. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten percent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

**38-767. Benefit increases: applicability**

A. For a member whose membership commenced before the effective date of this amendment to this section, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which

an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.
3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member who was eligible for an annual benefit increase pursuant to subsection A of this section had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.
2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.
3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined

contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

#### 38-768. Minimum retirement benefit

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members, is \$600.
2. For beneficiaries, is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection C is not eligible for a minimum benefit as provided by this section.

#### 38-769. Maximum retirement benefits; termination; definitions

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In

addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an

employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

### 38-770. [Eligible rollover distribution: definitions](#)

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections allowed in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D,

paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) Beginning January 1, 2008, a Roth individual retirement account described in section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account that satisfies the requirements of section 408(p) of the internal revenue code.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

**38-771. Benefit options for transferred defined contribution program members: definitions**

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by

section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.

3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747,

subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747,

subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.
2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.
3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.
4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this

section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:

1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.

5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.

6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.

7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.

8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

#### 38-772. Prior service under defined contribution program administered by ASRS; definitions

A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.

B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.

C. For the purposes of this section:

1. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

2. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

#### 38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of the board's acceptance of the domestic relations order, and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall:

1. Not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.
2. Value the member's benefit on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.
2. The name and last known mailing address of each alternate payee who is covered by the order.
3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.
4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.
2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.
2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. If an alternate payee predeceases the member, amounts payable to the alternate payee cease on the death of the alternate payee. ASRS shall cause the amount formerly payable to the alternate payee to revert to the member.

H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

### 38-774. Excess benefit arrangement

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

### 38-775. Required distributions: definitions

A. This section applies for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006. In applying the requirements of this section, the following operational provisions govern:

1. Except as provided in the following sentence, the requirements of this section take precedence over any inconsistent provisions of this article and article 2.1 of this chapter. The rules of this section shall not restrict any form, calculation, adjustment or payment of benefit provided under this article in effect on April 17, 2002, if the form, calculation, adjustment or payment of benefit satisfied section 401(a)(9) of the internal revenue code based on a reasonable and good faith interpretation of that section.

2. All distributions required under this section shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

3. Notwithstanding this section, other than paragraph 2 of this subsection, distributions may be made under a designation made before January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal responsibility act of 1982 (P.L. 97-248) and the provisions of this article that relate to that section.

B. The member's entire interest shall be distributed, or begin to be distributed, to the member not later than the member's required beginning date.

C. If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, not later than as follows:

1. If the member's surviving spouse is the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained seventy-two years of age, if later.

2. If the member's surviving spouse is not the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. For purposes of this subsection and subsection G of this section, distributions are considered to begin on the member's required beginning date or the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection, the date distributions are considered to begin is the date distributions actually commence.

4. If the member dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date prescribed in paragraph 1 or 2 of this subsection as long as the member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the member's death. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the member or the surviving spouse begin, this paragraph applies as if the surviving spouse were the member.

D. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made pursuant to subsections E, F and G of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions shall be made pursuant to the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the internal revenue code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury that apply to individual accounts.

E. The following provisions govern the determination of the amount to be distributed each calendar year:

1. If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year.

(b) The distribution period shall be over a life or lives or over a period certain not longer than the period described in subsection F or G of this section.

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum allowed.

(d) Payments shall either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics.

(ii) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit on death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection F of this section dies or is no longer the member's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the internal revenue code.

(iii) To provide cash refunds of employee contributions on the member's death.

(iv) To pay increased benefits that result from a plan amendment.

2. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection C, paragraph 1 or 2 of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bimonthly, monthly, semiannually or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

3. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

F. The following provisions govern annuity distributions that commence during a member's lifetime:

1. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in question and answer number 2 of section 1.401(a)(9)-6 of the regulations issued by the United States secretary of the treasury. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence applies to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches seventy years of age, the applicable distribution period for the member is the distribution period for seventy years of age under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury plus the excess of seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

G. The following provisions govern minimum distributions if a member dies before the date distributions begin:

1. Except as provided in subsection C, paragraph 4 of this section, if the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning not later than the time prescribed in subsection C, paragraph 1 or 2 of this section, over the life of the designated beneficiary or over a period certain not exceeding either of the following:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies before distributions to the surviving spouse begin, this subsection applies as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection C, paragraph 1 of this section.

H. If a member dies after the member's required beginning date and the member had not commenced distribution of retirement benefits, ASRS shall treat the member as having commenced distribution of retirement benefits on the member's required beginning date. Notwithstanding section 38-776, ASRS shall determine the member's retirement benefit as a straight annuity as of the date of the member's required beginning date. The member's estate is entitled to the member's benefit payments and any remaining member contributions on account shall be disbursed pursuant to section 38-763.

I. For the purposes of this section:

1. "Designated beneficiary" means the individual who is designated as the member's beneficiary to receive benefits under this article and is the designated beneficiary under section 401(a)(9) of the internal revenue code and question and answer number 1 of section 1.401(a)(9)-4 of the regulations issued by the United States secretary of the treasury.

2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection C of this section.

3. "Life expectancy" means life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury.

4. "Required beginning date" means the date payment of a member's benefits shall commence in accordance with section 401(a)(9)(C) of the internal revenue code.

### 38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, an existing contract or a court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

38-781. Supplemental employee deferral plan; public employees; administration; immunity; definitions

A. One or more supplemental employee deferral plans may be established pursuant to this section to provide public employees an opportunity to save additional tax-deferred monies for retirement.

B. ASRS may establish, administer, manage and operate supplemental employee deferral plans for employers.

C. ASRS may:

1. Employ services it deems necessary, including legal services, for the operation and administration of the plans.

2. Administer the plans through contracts with multiple vendors.

3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plans.

4. For the purposes of this section, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

D. A supplemental employee deferral plan does not replace an employee's existing state defined benefit retirement plan.

E. If an employer, including this state, elects to participate in a supplemental employee deferral plan, any employee of the employer who meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan may participate in the supplemental employee deferral plan.

F. Notwithstanding subsection E of this section, on or after July 1, 2022, an employee of an employer who is not eligible to participate in a public retirement system established by article 3, 3.1, 4, 4.1 or 6 of this chapter may elect to participate in a supplemental employee deferral plan if the employee meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan.

G. Employee participation in a supplemental employee deferral plan requires the participant's employer to make salary reductions from the participant's compensation at no cost to the employee, ASRS or any vendor retained by ASRS and contribute such salary reductions to the plan. An employer may make employer contributions to the supplemental employee deferral plan if the plan allows. The employer shall submit any reports required by the plan. If the participant is an active member, any compensation deferred by an employee under a plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits provided in this article earned by any employee participating in the plan.

H. Employee contributions and earnings on employee contributions are immediately vested. Employer contributions, if any, and the earnings on employer contributions shall vest according to the schedule established by the employer, if the employer completes and submits a schedule to ASRS. If the employer does not complete and submit a schedule to ASRS, employer contributions, if any, and the earnings on employer contributions shall vest according to the default schedule established by ASRS.

I. Notwithstanding any other law, this state and its officers and employees, the board and ASRS are immune from civil liability and are not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury arising out of the supplemental employee deferral plan.

J. A political subdivision or a political subdivision entity that is not participating in ASRS may elect to allow its employees to participate in a supplemental employee deferral plan that is overseen by ASRS pursuant to this section by entering into an agreement with ASRS. A political subdivision or political subdivision entity that elects to allow its employees to participate in a supplemental employee deferral plan pursuant to this subsection:

1. Is not an employer for the purposes of this article and its employees are not members for the purposes of this article.

2. May not provide any information indicating or implying that the political subdivision or political subdivision entity offers any ASRS benefits other than participation in a supplemental employee deferral plan pursuant to this subsection. A political subdivision or political subdivision entity that violates this paragraph may not elect to allow new employees to participate in a supplemental employee deferral plan pursuant to this subsection until the violation is corrected at the discretion of ASRS.

3. May elect to join ASRS pursuant to section 38-729.

K. For the purposes of this section:

1. "State" means this state, including any department, office, board, commission, agency or university, but does not mean any school district or community college district.

2. "Supplemental employee deferral plan" means a tax deferred annuity described in section 403(b) of the internal revenue code, including a custodial account described in 403(b)(7) of the internal revenue code, and an eligible deferred compensation plan described in section 457(b) of the internal revenue code. A supplemental employee deferral plan shall comply with all applicable provisions of the section of the internal revenue code under which such plan is adopted and maintained.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not

use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to

subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement

system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their

provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

[38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions](#)

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if

the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

(b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement

increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 38-791. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 8-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-792. Exemptions from execution, attachment and taxation; exception

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B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-793. Violation: classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

#### 38-794. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member

develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

#### 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

#### 38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

#### 38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

#### 38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

#### 38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

#### 38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines

pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it

includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

#### 38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### 38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

#### 38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

#### 38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

#### 38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing or has contributed.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

### **38-922. Transfer or redemption of service credits**

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

[38-923. Transfer of service credits between municipal retirement systems and special retirement plans: definitions](#)

A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system

or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

C. An active or inactive member of a retirement system or plan of a municipality of this state or of the elected officials' retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

D. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.

2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the retirement system or plan.

(c) Is not currently making contributions to the retirement system or plan.

(d) Has not withdrawn contributions from the retirement system or plan.

3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

#### 38-924. Transfer of service credits

A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:

1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.

2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.

C. If a member decides to transfer:

1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.

D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

**C-7**

**ARIZONA STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-126, R2-8-133



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 13, 2024

**SUBJECT: STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-126, R2-8-133

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System Board (ASRS) seeks to amend two (2) rules in Title 2, Chapter 8, Article 1 related to Retirement Application and Survivor Benefit Applications. Specifically, the ASRS seeks to amend its rules to clarify when the ASRS may cancel a retirement debit card it has issued due to non-activation and how a member may have a benefit reinstated after such a cancellation.

The ASRS indicates, without this rulemaking, members will not have adequate notice about how a debit card may be canceled and how a member may have their retirement benefits reissued. The ASRS indicates notice of such information is necessary in order to ensure that retirement benefits are properly disbursed. By promulgating these rules, the ASRS indicates members will have a better understanding of when their debit card may be canceled and how to have their benefits reissued. Increasing understanding of how the ASRS may cancel a debit card will increase the member's understanding of how to request their retirement benefits be reissued and reduce confusion, which will reduce burden on the public.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The ASRS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The ASRS states that when a retiree does not provide banking information in order to receive benefits, the ASRS will issue a debit card to the retiree. However, if the retiree does not activate the debit card, the ASRS must cancel the card and the retiree must contact the ASRS to have the benefits reissued. The ASRS states that without this rulemaking, members will not have adequate notice about how a debit card may be canceled and how a member may have their retirement benefits reissued. As such, the ASRS believes these rules will increase the clarity and effectiveness of the applicable debit card requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS manages debit cards. Stakeholders include the ASRS and all members of the ASRS, as well as their beneficiaries. The ASRS indicates it currently has a total membership of approximately 652,864 and 664 employers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS administers debit cards.

6. **What are the economic impacts on stakeholders?**

The ASRS states that the rulemaking does not directly affect state agencies and does not provide any benefits or impose any costs on political subdivisions. They state no businesses, of any size, are directly affected by the rulemaking. The ASRS believes there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The ASRS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The ASRS indicates it received no public comments related to this rulemaking and no one attended the oral proceeding held on September 5, 2023.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The ASRS indicates the proposed amended rules do not require issuance of a permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The ASRS indicates there is no federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the ASRS seeks to amend two (2) rules in Title 2, Chapter 8, Article 1 to clarify when the ASRS may cancel a retirement debit card it has issued due to non-activation and how a member may have a benefit reinstated after such a cancellation.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 8, 2024

Ms. Nicole Sornsins, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System Board**

Dear Ms. Sornsins:

The attached final rule package regarding debit cards is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 18, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Chief Strategy Officer;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Katie Daigneault  
Chief Strategy Officer



**state:**

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies when the ASRS may cancel a retirement debit card it has issued due to non-activation and how a member may have a benefit reinstated after such a cancellation.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on September 5, 2023.

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

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 1. RETIREMENT SYSTEM**

Section

R2-8-126. Retirement Application

R2-8-133. Survivor Benefit Applications

**ARTICLE 1. RETIREMENT SYSTEM**

**R2-8-126. Retirement Application**

A. For the purposes of this Section, the following definitions apply, unless stated otherwise:

1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
3. "Applicable retirement date" means the later of:
  - a. The date a member retires from the ASRS for the first time; or
  - b. The date a member re-retires from the ASRS after returning to active membership.
4. "Conservator" means the same as in A.R.S. § 14-7651.
5. "DRO" means the same as in R2-8-115.
6. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
7. "Legal documentation" means:
  - a. One document issued from a United States government entity; or
  - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious ~~institution~~institutions.
8. "LTD" means the same as in R2-8-301.
9. "Irrevocable PDA" means the same as in R2-8-501.
10. "On File" means the same as in R2-8-115.
11. "Original retirement date" means the later of:
  - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
  11. “Period certain and life annuity retirement benefit option” means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
  12. “Spouse” means the individual to whom a member is married under Arizona law.
  13. “Straight life annuity” means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
1. The member’s full name;
  2. The member’s Social Security number or U.S. Tax Identification number;
  3. The member’s marital status, if not On File with ASRS;
  4. The member’s current mailing address; if not On File with ASRS;
  5. The member’s date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary’s full name;
    - b. The beneficiary’s Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary’s date of birth;
    - d. The beneficiary’s relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the

retirement benefit designated to the member's spouse:

- a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
  - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
  - c. The member's spouse's full name; and
  - d. The member's spouse's notarized signature;
12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
- a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
  - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
  - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
  - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
13. Acknowledgement of the following statements of understanding:
- a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
  - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
  - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
    - i. The date ASRS receives the most recent Acceptable Documentation; or
    - ii. The retirement date contained in the most recent Acceptable Documentation.
  - d. The member has received the Special Tax Notice Regarding Plan Payments;
  - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;

- f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
- g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
- h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
- i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and

14. The member's notarized signature.

- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  - 1. The type of account and account number to which the member is electing to roll over;
  - 2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  - 3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.
- G.** Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H.** If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;

3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I.** A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J.** ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K.** After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § ~~38-764(H)~~38-764(G).
- L.** If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M.** If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H) (4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N.** The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:

1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  2. The member's total salary paid during their last fiscal year;
  3. The member's compensation for the last pay period;
  4. The name and title of the authorized Employer representative;
  5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O.** The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P.** As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q.** For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R.** Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.

- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card; if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
1. The member's full name;
  2. The member's bank account routing number;
  3. The member's bank account number; and
  4. The type of the account.
- Y. If the annuitant does not activate the debit benefit card the ASRS issues to the annuitant within 75 days, the ASRS shall reclaim all the retirement benefits issued on the debit benefit card and suspend the annuitant's retirement benefits until the annuitant:
1. Activates the debit benefit card or provides the direct deposit information according to subsection (X); and
  2. Returns the notice of benefit suspension with the following information:
    - a. The annuitant's Social Security number or U.S. Tax Identification number;
    - b. The annuitant's address; and
    - c. The annuitant's notarized signature.

~~Y.Z.~~ The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).

~~Z.AA.~~ ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

### **R2-8-133. Survivor Benefit Applications**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C.** Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D.** The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;

- iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
- v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
- e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
  - i. Whether the bank account is a checking or savings account;
  - ii. The name of the banking institution to which the benefit is being sent;
  - iii. The routing number;
  - iv. The account number; and
- f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
  - i. Full name;
  - ii. Mailing address, if not On File with ASRS;
  - iii. Date of birth, if applicable; and
  - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
- g. The following statements of understanding:
  - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
  - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
  - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
  - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
    - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
    - (2) They are not subject to backup withholding because:

- (a) They are exempt from backup withholding, or
  - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
  - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
- (3) They are a legal resident of the United States, unless they are an estate or trust.
- v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
  - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
  - vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:

- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.

- F.** For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G.** The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H.** The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I.** If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or

- ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
  - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c) (i), then a copy of the member's will;
  - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c) (ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
  - f. If there are other surviving heirs, then the name and relationship of each surviving heir;
  - g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The minor beneficiary's full name;
  - 4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  - 5. The full name of the minor beneficiary's legal guardian;
  - 6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  - 7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.

- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.
- T.** If the survivor does not activate the debit benefit card the ASRS issues to the survivor within 75 days, the ASRS shall reclaim all the survivor benefits issued on the debit benefit card and suspend the survivor's benefits until the survivor:
1. Activates the debit benefit card or provides the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi); and
  2. Returns the notice of benefit suspension with the following information:
    - a. The survivor's Social Security number or U.S. Tax Identification number;
    - b. The survivor's address; and
    - c. The survivor's notarized signature.



**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to how the ASRS may cancel and reinstate a retirement debit card issued by the ASRS.

a. The conduct and its frequency of occurrence that the rule is designed to change:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. When a retiree does not provide banking information in order to receive retirement benefits, the ASRS will issue a debit card to the retiree. However, if the retiree does not activate the debit card, the ASRS must cancel the card and the retiree must contact the ASRS to have benefits reissued.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Without this rulemaking, members will not have adequate notice about how a debit card may be canceled and how a member may have their retirement benefits reissued. Notice of such information is necessary in order to ensure that retirement benefits are properly disbursed. By promulgating these rules, members will have a better understanding of when their debit card may be canceled and how to have their benefits reissued. Increasing understanding of how the ASRS may cancel a debit card will increase the member's understanding of how to request their retirement benefits be reissued and reduce confusion, which will reduce burden on the public.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how the ASRS cancels debit cards, thereby increasing understandability of how members' benefits may be affected, thereby increasing the efficiency of the administration. Clarifying how the ASRS cancels a debit card and how a member may request benefits be reissued will ensure that payment efforts are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the applicable debit card requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how ASRS manages debit cards.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies when the ASRS may cancel a retirement debit card it has issued due to non-activation and how a member may have a benefit reinstated after such a cancellation.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All members of the ASRS, as well as their beneficiaries, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 652,864 and 664 employers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:
  - a. Identification of the small business subject to the rulemaking:  
No businesses, regardless of size, are subject to the rulemaking.
  - b. Administrative and other costs required for compliance with the rulemaking:  
Not applicable.
  - c. Description of methods that may be used to reduce the impact on small businesses:  
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
All ASRS retired members and beneficiaries are directly affected by the rulemaking.  
The effect has been previously described above.
9. Probable effects on state revenues:  
There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:  
The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS administers debit cards.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
 April 1, 2023 through June 30, 2023

*Section R2-8-301 numbering corrected and subsection reference under the “Estimated Social Security disability income amount” definition corrected. No other changes have been made to this Chapter since Supp. 22-3 (Supp. 23-2).*

**Questions about these rules? Contact:**

Board: Arizona State Retirement System  
 Address: 3300 N. Central Ave., Suite 1400  
 Phoenix, AZ 85012-0250  
[Website: https://www.azasrs.gov](https://www.azasrs.gov)  
 Name: Jessica A.R. Thomas, Rules Writer  
 Telephone: (602) 240-2039  
[Email: Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**PREFACE**

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
 ADMINISTRATIVE RULES DIVISION

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

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The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

**RULE HISTORY**

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

**AUTHENTICATION OF PDF CODE CHAPTERS**

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

**HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

**ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

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The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-711 et seq.

**Supp. 23-2**

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. RETIREMENT SYSTEM**

Section		
R2-8-101.	Repealed .....	4
R2-8-102.	Repealed .....	4
R2-8-103.	Repealed .....	4
R2-8-104.	Definitions .....	4
R2-8-105.	Repealed .....	5
R2-8-106.	Reserved .....	5
R2-8-107.	Reserved .....	5
R2-8-108.	Reserved .....	5
R2-8-109.	Reserved .....	5
R2-8-110.	Reserved .....	5
R2-8-111.	Reserved .....	5
R2-8-112.	Reserved .....	5
R2-8-113.	Emergency Expired 5	
R2-8-114.	Emergency Expired .....	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement .....	7
R2-8-118.	Application of Interest Rates .....	8
R2-8-119.	Expired .....	8
R2-8-120.	Repealed .....	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions .....	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	9
Table 1.	Expired .....	9
Table 2.	Expired .....	9
Table 3.	Repealed .....	9
Table 3A.	Expired 10	
Table 3B.	Expired .....	10
Table 4.	Expired 10	

Table 4A.	Repealed .....	10	
Table 4B.	Repealed .....	10	
Table 4C.	Repealed .....	10	
Table 5.	Expired 10		
Table 6.	Expired 10		
Table 7.	Expired 11		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		11
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application 12		
R2-8-127.	Re-Retirement Application 15		
R2-8-128.	Joint and Survivor Retirement Benefit Options 16		
R2-8-129.	Period Certain and Life Annuity Retirement Options .....	16	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant .....	16	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation .....	18	
R2-8-132.	Survivor Benefit Options 19		
R2-8-133.	Survivor Benefit Applications .....	20	
Table 1.	Repealed .....	22	
Table 2.	Repealed .....	22	
Table 3.	Repealed .....	22	
Table 4.	Repealed .....	22	
Table 5.	Repealed .....	22	
Table 6.	Repealed .....	23	
Table 7.	Repealed .....	23	
Table 8.	Repealed .....	23	
Table 9.	Repealed .....	23	
Table 10.	Repealed .....	23	
Table 11.	Repealed .....	23	
Exhibit A.	Repealed .....	23	
Exhibit C.	Repealed .....	23	
Exhibit G.	Repealed .....	25	
Exhibit H.	Repealed .....	25	
Exhibit I.	Repealed .....	26	
Exhibit J.	Repealed .....	26	
Exhibit K.	Repealed .....	26	

## ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)*

*(Supp. 17-2).*

*Article 2,*

*consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section			
R2-8-201.	Definitions .....	27	
R2-8-202.	Premium Benefit Eligibility and Benefit Determination		28
R2-8-203.	Payment of Premium Benefit .....	28	
R2-8-204.	Premium Benefit Calculation .....	29	
R2-8-205.	Premium Benefit Documentation .....	29	
R2-8-206.	Six-Month Reimbursement Program .....	29	
R2-8-207.	Optional Premium Benefit .....	30	

## ARTICLE 3. LONG-TERM DISABILITY

*Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).*

Section			
R2-8-301.	Definitions .....	31	
R2-8-302.	Application for Long-Term Disability Benefit .	31	
R2-8-303.	Long-Term Disability Calculation .....	31	
R2-8-304.	Payment of Long-Term Disability Benefit ...	32	
R2-8-305.	Social Security Disability Appeal .....	32	
R2-8-306.	Approval of Social Security Disability .....	32	

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	
	32	
R2-8-402.	General Procedures	
	32	
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	32
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	
	33	
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	33

**ARTICLE 5. PURCHASING SERVICE CREDIT**

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	
	34	
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	35
R2-8-503.	Requirements Applicable to All Service Credit Purchases	36
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	
	36	
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	36
R2-8-506.	Cost Calculation for Purchasing Service Credit	36
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	36
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	
	37	
R2-8-509.	Required Documentation and Calculations for Military Service Credit	
	37	
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	
	38	
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	
	39	
R2-8-512.	Purchasing Service Credit by Check, Cashier's Check, or Money Order	
	39	
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	
	39	
R2-8-513.01.	Irrevocable PDA and Transfer of Employment to a Different Employer	
	41	
R2-8-513.02.	Termination Date	
	41	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	41	
R2-8-515.	Repealed	42
R2-8-516.	Expired	42
R2-8-517.	Expired	42
R2-8-518.	Repealed	42
R2-8-519.	Purchasing Service Credit by Termination Pay	
	43	
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	43	
R2-8-521.	Adjustment of Errors	
	44	

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	44	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	44	
R2-8-603.	Petition for Rulemaking	
	44	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	44	
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	44	
R2-8-606.	Oral Proceedings	
	45	
R2-8-607.	Petition for Delayed Effective Date	
	45	

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section

R2-8-701.	Definitions	
	45	
R2-8-702.	General Information	
	45	
R2-8-703.	Employer’s Discovery of Error	
	46	
R2-8-704.	Member’s Discovery of Error	
	46	
R2-8-705.	ASRS’ Discovery of Error	
	46	
R2-8-706.	Determination of Contributions Not Withheld	
	46	
R2-8-707.	Submission of Payment	
	47	
R2-8-708.	Expired .....	47
R2-8-709.	Repealed .....	47

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section

R2-8-801.	Definitions .....	47
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	47
R2-8-803.	Reimbursement of Overpayments	
	48	
R2-8-804.	Collection of Overpayments from Forfeiture	
	48	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	48
R2-8-806.	Collection of Overpayments from Survivor Benefit	
	.....	49
R2-8-807.	Collection of Overpayments from LTD Benefit	
	49	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	49
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	49
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	49

**ARTICLE 9. COMPENSATION**

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section

R2-8-901.	Definitions .....	49
R2-8-902.	Remitting Contributions .....	49
R2-8-903.	Accrual of Credited Service .....	50
R2-8-904.	Compensation from An Additional Employer .	50
R2-8-905.	Expired .....	50

**ARTICLE 10. MEMBERSHIP**

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section

R2-8-1001.	Definitions	
	50	
R2-8-1002.	Employee Membership	
	50	
R2-8-1003.	Charter School Employer Membership .....	51
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	.....	52
R2-8-1005.	Employer Reporting	

R2-8-1006.	53	Prior Service Purchase Cost for New Employers
53		

**ARTICLE 11. TRANSFER OF SERVICE CREDIT**

Section		
R2-8-1101.	Definitions	
	54	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	54
R2-8-1103.	Transferring Service to Other Retirement Plans	
	.....	55

## ARTICLE 1. RETIREMENT SYSTEM

### R2-8-101. Repealed

#### Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-102. Repealed

#### Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-103. Repealed

#### Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
  - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
  - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
  - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
  - a. The requirements of A.R.S. § 38-773(C);
  - b. The date of the member and alternate payee's marriage;
  - c. The date of divorce or the date in which the community property interest ended;
  - d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
  - e. How the member's ASRS benefits should be split in specific amounts for the following possible events:
    - i. The member's retirement;
    - ii. Return of contributions and termination of membership according to R2-8-115; and
    - iii. The death of the member prior to retirement;
  - f. Whether the member may transfer all ASRS service credit to another retirement system;
  - g. Whether the member is required to maintain the alternate payee as the member's beneficiary;
  - h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
  - i. The judge's dated signature.
10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended

by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;
  - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
  - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
  - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
  - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
  - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

- j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
  - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
  - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
  - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
- a. The type of eligible retirement plan; and
  - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  - 6. The Employer's name and telephone number;
  - 7. The Employer Number;
  - 8. The name and title of the authorized Employer representative;
  - 9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

#### **Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-116. Alternate Contribution Rate**

- A. For purposes of this Section, the following definitions apply:
- 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  - 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  - 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  - 4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest	Assumed Actuarial Investment	Interest Rate Used to Determine Return of Contributions Upon
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Rate Change	Earnings Rate	Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  - 1. The interest and investment return rate assumptions are determined by the Board.
  - 2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**Table 1. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614,

effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former

Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3).

Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and

- b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
- 3. "Compensation" means the same as in A.R.S. § 38-711(7).
- 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
- 5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
  - a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
- 6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
- 7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
- 8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
  - 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  - 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

#### **Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

#### **R2-8-126. Retirement Application**

- A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
  - 1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  - 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  - 3. "Applicable retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or
    - b. The date a member re-retires from the ASRS after returning to active membership.
  - 4. "Conservator" means the same as in A.R.S. § 14-7651.
  - 5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  - 6. "Legal documentation" means:
    - a. One document issued from a United States government entity; or
    - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
  - 7. "LTD" means the same as in R2-8-301.
  - 8. "Irrevocable PDA" means the same as in R2-8-501.
  - 9. "On File" means the same as in R2-8-115.
  - 10. "Original retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. The member's current mailing address; if not On File with ASRS;
  5. The member's date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary's full name;
    - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary's date of birth;
    - d. The beneficiary's relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
    - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member's spouse's full name; and
    - d. The member's spouse's notarized signature;
  12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  1. The type of account and account number to which the member is electing to roll over;
  2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
  - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  - 2. The member's total salary paid during their last fiscal year;
  - 3. The member's compensation for the last pay period;
  - 4. The name and title of the authorized Employer representative;
  - 5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  - 1. The member's full name;
  - 2. The member's bank account routing number;
  - 3. The member's bank account number; and
  - 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

#### **Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D)

effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-127. Re-Retirement Application**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re- retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C.** If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

#### **R2-8-128. Joint and Survivor Retirement Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C.** A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F.** Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-129. Period Certain and Life Annuity Retirement Options**

- A.** The definitions in R2-8-126 apply to this Section.

- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
  - a. Full name;
  - b. Social Security number, if the contingent annuitant is a U.S. citizen;
  - c. Date of birth; and
  - d. Legal relationship to the member.
- 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
  - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
- 8. Whether the spouse's consent is not required because:
  - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.
- Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

- A. The definitions in R2-8-126 apply to this Section.
- B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
  - 1. The Member's full name and one or more of the following information:
    - a. The Member's Social Security number or U.S. Tax Identification number; or
    - b. The Member's address; or
    - c. The Member's date of birth;
  - 2. The following information for the beneficiary:
    - a. The full name of the person or entity the member is designating as beneficiary;
    - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
    - c. The percentage of the benefit the member is allocating to the beneficiary; and
  - 3. The member's notarized signature.
- C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E. Effective July 1, 2013, a married member:
  - 1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary;
  - 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate contingent annuitant; or
    - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
  - 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
  - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
  2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** A DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:
          - (a) They are exempt from backup withholding, or
          - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
          - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
          - (3) They are a legal resident of the United States, unless they are an estate or trust.
        - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
        - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan

- will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or
      - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
    - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
    - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
    - f. If there are other surviving heirs, then the name and relationship of each surviving heir;

- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496,









#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

#### Exhibit M, Table 6. Repealed

#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

### ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

#### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 04-3).

07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  - 1. The actual cost of the Coverage premium; or
  - 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

- a. First and last name;
  - b. Social Security number or U.S. Tax Identification number;
  - c. Date of birth; and
  - d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
  - a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
  - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

### **ARTICLE 3. LONG-TERM DISABILITY**

#### **R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
3. "Estimated Social Security disability income amount" means the same as in R2-8-801(1).
4. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
5. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
6. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
7. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Numbering corrected and subsection reference under the "Estimated Social Security disability income amount" definition corrected (Supp. 23-2).

#### **R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

#### **R2-8-303. Long-Term Disability Calculation**

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

#### **R2-8-304. Payment of Long-Term Disability Benefit**

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.
- D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

#### **R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

### **ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

#### **R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

#### R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
  1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
  1. The decision the agency is making in response to the letter of appeal; and
  2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
  1. The agency action the ASRS is taking in response to the letter of appeal; and
  2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
  1. The name and mailing address of the member, employer, or other person filing the Request;
  2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
  1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I. The Board has delegated to each Health Plan Vendor the authority to:
  1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  - 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

### **ARTICLE 5. PURCHASING SERVICE CREDIT**

#### **R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;

- b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
  19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
  20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
  21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
  22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
  23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
  24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
  25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
    - a. After accepting an offer to work for a new Employer;
    - b. While working as an active member for a different Employer; or
    - c. Before returning to work with any Employer within 120 days of terminating employment.
  26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
  27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
  28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
  1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
  1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
  1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
  1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
  - 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  - 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
  - 1. Leave of Absence Service;
  - 2. Military Service;
  - 3. Forfeited Service; and
  - 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
  - 1. The amount the Eligible Member wants to apply, and
  - 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
  - 1. Leave of Absence Service;
  - 2. Military Service; and
  - 3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

- A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
  - 1. One year of credited service in any plan year, or
  - 2. One month of credited service in any one calendar month.
- B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.
- C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
  - 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  - 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
  - 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and

2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
  1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
  1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
  1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
  - 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
  - 1. The name and mailing address of the Other Public Service employer;
  - 2. The position the Eligible Member held while working for the Other Public Service employer;
  - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or

- c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
  - C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
  - 1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
  - 2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
    - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
    - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
    - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
      - i. Terminating employment;
      - ii. Terminating LTD without returning to work with an Employer; or
      - iii. The effective ASRS retirement date;
    - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
    - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
    - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
    - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
  - 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;

- c. Understands that the election to use Termination Pay is binding and irrevocable;
  - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
  - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
  - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
  - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  2. Limit the payroll deduction time period to a maximum of 520 payments; and
  3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
  2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  3. Eligible Member terminates all ASRS employment without transferring employment; or
  4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
  2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
    - c. The ASRS shall not accept the following fund types:
      - i. Roth funds;
      - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      - iii. Inherited IRA;
      - iv. Coverdale Education Savings Account funds;
      - v. Hardship distributions;
      - vi. Funds not includable in gross income;
      - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      - ix. One of a series of substantially equal periodic payments made for 10 years or more;
      - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
    - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
    - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
    - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
    - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
  - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
    1. The Eligible Member's full name;
    2. The last 4 digits of the Eligible Member's Social Security number;
    3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
    4. The Authorized Representative's name and title;
    5. The Authorized Representative's telephone number; and
    6. Certification by the Authorized Representative's dated signature that:
      - a. The plan is either:
        - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
        - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
        - iii. An annuity contract described in IRC § 403(b); or
        - iv. An IRA described in A.R.S. § 38-747(H)(3);
      - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
      - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and

- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
  2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  3. The signature of the person submitting the petition, and
  4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the person submitting the objection;
  2. Identification of the rule;
  3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  4. The signature of the person submitting the objection; and
  5. The date the person signs the objection.
- B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
  2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  4. Explain the background and general content of the proposed rulemaking;
  5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
1. Name and current address of the person submitting the petition;
  2. Identification of the proposed rule;
  3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  4. Reason why the public interest will not be harmed by the delayed effective date;
  5. Signature of the person submitting the petition; and

6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B.** The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C.** The ASRS shall not waive payment of contributions or interest owed under this Article.
- D.** If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
  
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A.** If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
  - c. The member's position title during the date range listed in subsection (A)(2)(b);
  - d. Whether the member was Engaged to Work for the Employer; and
  - e. Dated signature of the member certifying the member understands:
    - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
    - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, Employer and the member, an invoice with the following:
  - 1. The amount of Eligible Service for which contributions were not withheld,
  - 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  - 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  - 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  - 5. The dollar amount of contributions to be paid to the ASRS by the member.
- F.** The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022),

with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-708. Expired**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

**R2-8-801. Definitions**

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A.** Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B.** A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C.** An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- D.** If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- E.** A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- F.** If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  - 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  - 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  - 1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  - 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  - 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  - 1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  - 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION**

**R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
  - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired**

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

## ARTICLE 10. MEMBERSHIP

### R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

### Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

### R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.

- J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

- A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the

political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

- C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1005. Employer Reporting**

- A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;

7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
  1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1006. Prior Service Purchase Cost for New Employers**

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
  1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
  1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.
- G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.
- H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

### **ARTICLE 11. TRANSFER OF SERVICE CREDIT**

#### **R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.

5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
  1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
  - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  - 2. The Member’s Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  - 1. The member’s full name;
  - 2. The last four digits of the member’s Social Security number;
  - 3. The name of the Other Retirement Plan; and
  - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  - 1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
  - 2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  - 1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  - 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.
- H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee’s notarized signature.

**Historical Note**

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

### 38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
  - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
  - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
  - (iv) Payments for allowances.
  - (v) Reimbursements for employee business expenses or employee personal expenses.
  - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
  - (vii) Payments made in lieu of any employer-paid insurance coverage.
  - (viii) Workers' compensation, unemployment compensation payments and disability payments.
  - (ix) Merit awards pursuant to section 38-613.
  - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
  - (xi) Payments made in the form of goods or services in lieu of gross wages.
  - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
  - (xiii) Payments in excess of the section 401(a)(17) of the internal revenue code limits established in section 38-746.
  - (xiv) Payments for any other employment benefit.
  - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
  - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
  - (c) Means any person receiving a benefit under ASRS.
  - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
  - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
  - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
    - (i) Is not otherwise an employee of an employer.
    - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
    - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

**38-712. ASRS purpose: trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.

2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.

3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.

4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming a person with a disability.

5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.

B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

38-713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.

2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

- 1. A portfolio manager acting in a fiduciary capacity.
- 2. A securities analyst.
- 3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
- 4. A chartered financial analyst in good standing as determined by the CFA institute.
- 5. A professor at the university level teaching economics or investment related subjects.
- 6. An economist.
- 7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

- 1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.
- 2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year not later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The

report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

K. In determining the past service funding period, the board shall seek to improve the funded status whenever the trust fund established by section 38-712 is less than one hundred percent funded.

**38-715. Director: powers and duties**

- A. The board shall appoint a director. The director shall serve at the pleasure of the board.
- B. The director shall appoint a deputy director and assistant directors with the approval of the board.
- C. The director, under the supervision of the board, shall:
  1. Administer this article.
  2. Be responsible for the recruitment, hiring and day-to-day management of employees.
  3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.
  4. Prescribe procedures to be followed by employers for remitting data and monies to ASRS and for receiving data and monies from ASRS.

5. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account, the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

4. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. For current or prospective employees of ASRS, the director, under the supervision of the board, may:

1. Conduct criminal records checks. The director may require a current or prospective employee to submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. Conduct credit checks for accounting, investment and other finance-related positions. The director shall establish a policy for conducting credit checks on a current employee that includes the method for determining when a credit check may be conducted, retaining records relating to the reason for the credit check and notifying an employee of the credit check and the result of the credit check.

F. The director and all persons employed by the director are subject to section 38-611 and title 41, chapter 4, article 4.

G. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following ASRS positions:

1. Director.
2. Deputy director.
3. Chief investment officer.
4. Fiduciary or investment counsel.

**38-716. Employers' responsibilities under the system**

In addition to any other requirements of this article or article 2.1, 7 or 8 of this chapter, an employer of a member shall:

1. Cooperate and collaborate with ASRS and follow all ASRS procedures to ensure the proper enrollment of members in the system.
2. Submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to make eligibility determinations and for the proper administration of the plan.
3. Attend the ASRS annual training conference.

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.

**38-718. Investment managers: general powers and duties: investment of monies: limitations**

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member

nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

### 38-718. Investment managers; general powers and duties; investment of monies; limitations

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

**38-719. Interest paid to members and employers**

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

**38-720. ASRS depository**

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

**38-721. Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.

3. Actuarial consulting fees.

4. Retiree payroll.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection E, paragraph 1 and subsection I, paragraphs 2 and 3, section 38-718, subsection D, paragraph 5 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

**38-722. Abandoned monies: disposition**

A. Except as otherwise provided in this section, the trust fund established by section 38-712 is exempt from title 44, chapter 3.

B. Monies in the ASRS trust fund and the LTD trust fund established by section 38-797.02 are presumed abandoned if the apparent owner, as defined in section 44-301, has not communicated in writing with ASRS and has not otherwise indicated an interest in the monies for the three year period following the required beginning date of distributions pursuant to section 38-775.

C. At the time monies are presumed abandoned pursuant to subsection B of this section, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.

D. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.

E. Before monies are presumed abandoned, ASRS shall attempt to contact the apparent owner in writing. If the apparent owner is a member, beginning five years before the apparent owner's required beginning date of distributions pursuant to section 38-775 and for three years after that date, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a retirement benefit. If the apparent owner is a beneficiary, beginning in the calendar year containing the fifth anniversary of the member's death and for three years, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a survivor benefit. If this notice is returned by the postal authority as undeliverable, ASRS shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with ASRS, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails and the base amount of the unclaimed monies is three hundred dollars or more, ASRS may use the services of a people search service. A fee imposed by the people search service shall not be deducted from the member's benefit and these expenditures are continuously appropriated and shall be paid from the administration account established pursuant to section 38-721 in the amount deemed necessary by the board.

F. If at any time an owner, as defined in section 44-301, establishes an entitlement in the monies, ASRS shall withdraw the monies from either the ASRS trust fund or the LTD trust fund, whichever is applicable, and pay the owner the monies or benefit to which the owner is entitled pursuant to this article or article 2.1 of this chapter, including interest at a rate determined by ASRS, if applicable.

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-724. Surrender of property subject to levy; authority to release levy and return property; definitions

A. Any person in possession of, or obligated with respect to, property subject to levy on which a levy has been made, on request of ASRS, shall surrender the property or discharge the obligation to

ASRS, except the part of the property that is, at the time of the request, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property subject to levy, on request by ASRS, is liable in person and estate to this state in a sum equal to the value of the property not so surrendered, but not exceeding the amount of debt for the collection of which the levy has been made, with costs and interest on the sum at the interest rate determined by the board from the date of the levy or, in the case of a levy described in section 38-723, subsection E, from the date the person would otherwise have been obligated to pay the amounts to the debtor. Any amount, other than costs, recovered under this subsection shall be credited against the debt for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property subject to levy on which a levy has been made who, on request by ASRS, surrenders the property or discharges the obligation to ASRS is discharged from any obligation or liability to the debtor with respect to the property arising from the surrender or payment.

D. ASRS may release a levy on all or part of property levied on. The release shall not operate to prevent any subsequent levy.

E. If ASRS determines that property has been wrongfully levied on, ASRS shall return the specific property levied on or an amount of money equal to the value of the property levied on.

F. For the purposes of this section:

1. "Levy" includes the power of distraint and seizure by any means.

2. "Person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, or any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property or to discharge the obligation.

#### 38-725. Financial institutions data match; prohibited disclosure; fee; definition

A. ASRS may enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist ASRS in the collection of monies owed. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. The data exchanges shall include the name, address of record, social security number and any other identifying information for each person who maintains an account at the institution and who owes money as identified by ASRS by name and social security number.

C. ASRS or its agent may disclose a debtor's financial record under this section only in order to enforce the collection of the money the debtor owes to ASRS.

D. ASRS may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

E. For the purposes of this section "financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

**38-727. Eligibility; options**

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this subsection.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. A person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days after employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

9. The following are ineligible for membership in ASRS:

(a) A person who performs services in a hospital, home or other institution as an inmate or patient at the hospital, home or other institution.

(b) A person who performs agricultural labor services, as defined in section 210 of the social security act.

(c) A person who is a nonresident alien temporarily residing in the United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are performed.

(d) A person who performs services for a school, college or university in this state at which the person is enrolled as a student, as defined by the employing institution. The employing institution

shall maintain an appeal process for a person who disagrees with the employing institution's determination that the person is a student and not eligible for membership in ASRS.

(e) A person who performs services under a program designed to relieve the person from unemployment.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. An elected official, as defined in section 38-831, who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability, if the elected official's employer is a participating employer under this article and the elected official is eligible for ASRS service credit for the elected official's service.

#### 38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amount equal to the present value required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan using the actuarial assumptions that are approved by the board. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

J. Notwithstanding any other law, an employee of a political subdivision who was previously a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that public employee retirement system for any period of employment is ineligible to receive service credit from ASRS for the same period of employment.

### 38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The transfer shall be made pursuant to section 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

#### **38-735. Payment of contributions: recovery of delinquent payments**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

#### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions; prepayment; definitions

A. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.

Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1. 401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38-712 or a section 115 trust.

2. ASRS shall determine the following options available to the employer:

(a) The amortization time periods.

(b) The frequency and dates that prepayments can be made.

(c) The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d) Any other options or obligations that the employer may have when entering into this written agreement.

3. The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4. The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38-718.
  5. 401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38-735.
  6. The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.
  7. ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.
  8. Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:
    - (a) In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
    - (b) After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
  9. After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.
  10. If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.
  11. Assets transferred in or out of or held in the ASRS trust fund established by section 38-712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.
  12. The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.
  13. If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax-exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.
- E. In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:
1. Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2. Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F. For the purposes of this section:

1. "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2. "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions.

### 38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit or, if the request is made within one year after the date of overpayment, shall return the contributions to the employer. ASRS may not pay an employer earnings attributable to the excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit. On receipt of an employer credit or return of contributions pursuant to this subsection, the employer shall return any member portion of the returned contributions to the member.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by

ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

E. Notwithstanding any other law, an employer may correct a contributions error pursuant to subsection B of this section by making payment adjustments through the employer's payroll reporting for the contributions that were not submitted if both of the following apply:

1. The adjustment is made within the same fiscal year that the contributions were due to ASRS.

2. The employer obtains written consent from the employee to make the adjustment to the employee's paycheck.

F. Notwithstanding any other law, if an employer pays less than the correct amount of employer or member contributions into ASRS, the correct amount of member contributions may not be paid to ASRS after the death of the member.

### 38-739. Credited service

- A. A member shall not earn more than one year of credited service in any fiscal year.
- B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.
- C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.
- D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.
- E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.
- F. The following years of service are excluded from credited service under this article:
  - 1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.
  - 2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

#### 38-739.01. Credited service retention

Consistent with the compliance statement issued by the United States internal revenue service, an employee who is employed with an ASRS employer in a position that was exempt from ASRS membership because the position was not included in agreements providing for the employee's coverage under the federal old-age and survivors insurance system but on whose behalf the employer has remitted ASRS contributions shall retain credited service for the period of employment for which the employer remitted ASRS contributions on the employee's behalf.

### 38-740. Return of contributions

- A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
  - 1. If the member has less than five years of credited service, ASRS shall disburse all of the member's contributions.
  - 2. If a member has five or more years of credited service, ASRS shall disburse the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738,

subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five percent.
- (b) 6.0 to 6.9 years of credited service, forty percent.
- (c) 7.0 to 7.9 years of credited service, fifty-five percent.
- (d) 8.0 to 8.9 years of credited service, seventy percent.
- (e) 9.0 to 9.9 years of credited service, eighty-five percent.
- (f) 10.0 or more years of credited service, one hundred percent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If ASRS has disbursed an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If ASRS disburses more than the amount due to a member or an alternate payee pursuant to this section, the person who received the overpayment shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

#### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, ASRS shall disburse benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

#### 38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

#### 38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is

derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

**38-744. Leave of absence: credit for leave without pay**

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

**38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
3. Volunteers or is ordered into active military service of the United States as part of a military call-up.
4. One of the following occurs:
  - (a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.
  - (b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

#### 38-746. Compensation limitation: adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

#### 38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) \$40,000 or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred percent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any

other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution from one or more:

- (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

- (b) Annuity contracts described in section 403(b) of the internal revenue code.

- (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

3. Accepting from a member a direct transfer from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code of an amount that would otherwise be eligible to be rolled over to ASRS under the provisions of section 408(d)(3)(A)(ii) of the internal revenue code if the amount had been received by the member and would have otherwise been includible in the member's gross income but for the direct transfer.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.
3. "Defined contribution plan" has the same meaning prescribed in section 38-769.
4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.
5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.
6. "Limitation year" has the same meaning prescribed in section 38-769.
7. "Participating employer" means an employer that participates in ASRS.
8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

**38-748. Employer payments for ineligible contributions; definitions**

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS shall provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

**38-749. Employer termination incentive program; employer payment of actuarial cost; definition**

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

### 38-750. Transfers out of the system

A. If an employee has made an irrevocable election pursuant to section 38-747, subsection B or D and transfers participation to another defined benefit retirement system or plan of this state without a termination of employment, within ninety days after the date of the transfer, ASRS shall transfer to the subsequent defined benefit retirement system or plan the amount the employee paid for the purchase of the credited service plus interest as determined by ASRS.

B. If the assets transferred from ASRS are less than the cost of the benefits accrued relative to the credited service as calculated pursuant to section 38-922, subsection B, paragraph 2, and unless a law otherwise provides, the employee shall elect either to pay the difference to the subsequent defined benefit retirement system or plan or accept a reduced amount of service credits. If the employee elects to pay the difference, the amount paid shall be added to the employee's accumulated contribution account balance. If the employee elects to accept a reduced amount of service credits, the amount of service credits granted shall be equal to the amount of service credits purchased multiplied by the ratio of the amount of assets transferred to the amount calculated pursuant to section 38-922, subsection B, paragraph 2.

C. The transferred employee and the employer shall complete the terms of the irrevocable election by making payments to ASRS.

D. If the employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, on termination of employment the employee shall elect to have ASRS:

1. Promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to elect to have the assets transferred within thirty days after termination of employment, the employee is deemed to have made an election as prescribed in paragraph 2.

2. On written request by the employee, promptly return to the employee the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If no application is received by ASRS within sixty days after termination of employment, ASRS shall issue the payment directly to the employee.

E. If the employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, after termination of employment the employee may elect within thirty days of termination of employment to have ASRS promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to make the election under this subsection, ASRS shall deem the employee as an inactive member of ASRS.

F. If an employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is

receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is eligible to transfer to the retirement system or plan, but the election to transfer terminates the benefit from ASRS on the effective date of the transfer.

G. If an employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is not eligible to transfer to another retirement system or plan.

**38-751. Nonparticipatory employer liability allocation; exemption; definitions**

A. ASRS shall establish a separate fund for an employer, other than a charter school, that is no longer participating in ASRS as a result of any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state, dissolves.
3. Through legislative action, the employer is no longer enrolling new employees in ASRS or no longer contributing to ASRS on behalf of current employees or groups of employees who otherwise would be eligible for ASRS membership.

B. For a nonparticipating employer described in subsection A of this section, ASRS shall allocate an actuarial accrued liability and a designated asset amount to the nonparticipating employer's separate fund as of the nonparticipation date, which shall be calculated as follows:

1. The actuarial accrued liability shall equal the sum of the plan employer actuarial accrued liability and the LTD program employer actuarial accrued liability. Actuarial accrued liability shall be calculated based on the same actuarial assumptions and methods as the actuarial valuation performed immediately preceding the nonparticipating employer's nonparticipation date.

2. The designated asset amount shall equal the sum of the following:

- (a) The plan employer actuarial accrued liability multiplied by the plan funded percentage.
- (b) The LTD program employer actuarial accrued liability multiplied by the LTD program funded percentage.

C. All monies and securities transferred to the nonparticipating employer's separate fund shall be credited to that fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes. ASRS shall make all decisions regarding the nonparticipating employer's separate fund.

D. After establishing the nonparticipating employer's separate fund, the fund shall be adjusted for all of the following:

1. All contributions made by employees of the nonparticipating employer.
2. All contributions made by the nonparticipating employer.

3. All plan, all LTD program and any other benefits paid to the nonparticipating employer's members who are active, inactive, retired or on long-term disability.

4. All plan, all LTD program and any other benefits paid to the survivors of the nonparticipating employer's members.

5. The applicable share of the investment gains and losses.

6. Expenses associated with the administration of the nonparticipating employer's separate fund, including any administrative, development, actuarial, legal, custodial and investment management costs associated with the fund. These expenses shall be paid directly by the nonparticipating employer or included in the employer's liability for the purposes of determining the employer's contribution rate.

E. After establishing the nonparticipating employer's separate fund, the nonparticipating employer and any employees of that employer who are enrolled in ASRS shall continue to have contribution requirements to the nonparticipating employer's separate fund. The contribution requirements shall be calculated as follows:

1. All employees of the nonparticipating employer who are enrolled in ASRS shall continue to make contributions through payroll deductions based on the contribution rate determined for the employees of participating employers of ASRS pursuant to section 38-736.

2. The nonparticipating employer shall continue to make contributions through lump sum payments in accordance with section 38-735, equal to the sum of:

(a) Contributions owed through payroll deductions based on the contribution rate determined for participating employers pursuant to section 38-737.

(b) The amount required to amortize the past service funding requirement in the nonparticipating employer's separate fund over a period that is determined by the board and that is consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the nonparticipating employer's separate fund is less than one hundred percent funded.

F. The ASRS actuary shall determine the actuarial assumptions used to determine the contribution requirements for the nonparticipating employer under subsection E of this section. Notwithstanding section 38-737, the contribution for the nonparticipating employer may not be determined as a percentage of compensation due to the anticipated decline of compensation for employees of the nonparticipating employer participating in ASRS. The nonparticipating employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS at a rate that is consistent with the rate paid by the participating employers. Each fiscal year, amounts that are not remitted through payroll contributions pursuant to this section shall be invoiced to the employer and shall be paid within the same fiscal year the nonparticipating employer is invoiced.

G. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

H. For the purposes of calculating an employer's liability under this section, members who are active, inactive, retired or on long-term disability are considered employees of the nonparticipating employer

if the member's most recent employer was the nonparticipating employer as of the nonparticipation date.

I. This section does not apply to an employer whose existence was terminated by legislative action or otherwise became a nonparticipating employer as described in subsection A of this section on or before January 1, 2013.

J. For the purposes of this section:

1. "LTD program" means the program established by article 2.1 of this chapter.

2. "LTD program employer actuarial accrued liability" means the actuarial accrued liability for the employer's active and inactive members and the open LTD program claims for the employees of the employer as of the nonparticipation date.

3. "LTD program funded percentage" means the total market value of LTD program assets divided by the total LTD program actuarial accrued liabilities, as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the LTD program funded percentage is one hundred percent.

4. "Nonparticipation date" means the date on which the employer is no longer participating in ASRS.

5. "Plan" means the retirement plan established by this article.

6. "Plan employer actuarial accrued liability" means the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for the employer's active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date.

7. "Plan funded percentage" means the plan's total market value of assets divided by the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for all active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the plan funded percentage is one hundred percent.

**38-755. Member's account information: beneficiary designation: spousal consent: confidentiality**

A. ASRS shall make information concerning a member's account accessible to the member in written or electronic form. This information shall include the member's current account balance, contact information, beneficiary election, estimated retirement date and estimated benefit amount.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty percent of the member's account, unless naming or maintaining the current spouse as a beneficiary violates another law, an existing contract or a court order. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. In order to protect a member's identity from fraud, abuse, theft or civil or criminal activity, information about a member is not subject to inspection pursuant to title 39, chapter 1, article 2, except that the following information about a member is subject to inspection:

1. The member's name.
2. Whether the member is an active member as defined in section 38-711, an inactive member as defined in section 38-711 or a retired member as defined in section 38-711.
3. The member's current or most recent employer.
4. For a retired member, the average monthly compensation, as defined in section 38-711, used to calculate the member's retirement benefit.
5. The credited service as defined in section 38-711 on account for an active or inactive member or the credited service used to calculate the retirement benefit for a retired member.
6. The gross pension amount actually paid to a retired member.
7. The most recent retirement date.
8. The current account balance for an active or inactive member.
9. The gross long-term disability program benefit actually paid to a member with a disability pursuant to article 2.1 of this chapter.
10. The amount paid to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
11. The amount of credited service purchased pursuant to section 38-743, 38-744 or 38-745.

E. ASRS shall not permit any unredacted record to be inspected that contains a member's social security number, bank account information, address, telephone number, e-mail address, medical records, health insurance information, beneficiary or survivor information or disability information or any information that is protected by any federal or state law.

**38-756. [Outreach education program](#)**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.
7. The development of a creative promotional program using available media outlets.

C. ASRS shall present, either in person or through the use of electronic means, the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

### 38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. Except as provided in section 13-713, a member's right to the member's normal retirement benefit as described in subsection B of this section is nonforfeitable by an employer or ASRS on attainment of the member's normal retirement date.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a straight life annuity that equals the result of paragraph 1 of this subsection multiplied by paragraph 2 of this subsection when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 percent if the member does not have more than 19.99 years of credited service.

(b) 2.15 percent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 percent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 percent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

### 38-758. Early retirement

A. A member who has attained age fifty, who has terminated employment with all employers and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. For a member whose membership in ASRS commenced before July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three percent for each unit of one or fraction of one by which the sum is less than eighty.

C. For a member whose membership in ASRS commenced on or after July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 at the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this subsection for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixty-second birthday if the member has at least ten years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

#### 38-759. Late retirement; definition

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the member's required beginning date.

C. For the purposes of this section, "required beginning date" has the same meaning prescribed in section 38-775.

#### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor life annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's

effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the life annuity of the member under the same joint and survivor life annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted life annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor life annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor life annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

#### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection E.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

#### **38-763. Survivor benefits after retirement**

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits distributed by ASRS. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

#### **38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. All retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. Except as provided in subsection D of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement

benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

D. The board may pay the entire retirement benefit in a lump sum pursuant to subsection C of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

E. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783 but is not eligible for a benefit increase pursuant to section 38-767.

F. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

G. Notwithstanding subsection H of this section, a member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

H. A member may elect to make changes to a retirement application before the member's retirement date. A member may exercise a onetime election to make changes to the retirement application within sixty days after the member's retirement date. The member may not change the member's retirement date, and any changes made to the retirement application are retroactive to the member's retirement date.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

#### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### **38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.
2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A retired member whose retirement benefits have been suspended pursuant to subsection A of this section shall repay ASRS any retirement benefits received by the member from the date ASRS notifies the member in writing that the member's employment resulted in active membership in ASRS pursuant to subsection A of this section, from the date ASRS determines that the member knew or should have known that the member's employment resulted in membership in ASRS pursuant to subsection A of this section or for any other period that approximates the duration of the violation, as determined by ASRS.

C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

- (a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

- (b) Allows a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

E. A retired member who returns to work pursuant to subsection D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. An employer that engaged the retired member to work pursuant to this section shall pay to ASRS an amount equal to the rate established by the actuary pursuant to section 38-766.02, subsection B for the period starting with the first day the retired member began working after retirement through the earlier of:

1. The date the member terminates employment.
2. The date the member resumes active membership pursuant to subsection A of this section and the member and employer are required to make contributions pursuant to section 38-736, 38-737 or 38-738.

**38-766.01. Retired members; return to work**

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated direct employment with an employer at least three hundred sixty-five consecutive days before returning to work.
3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. Notwithstanding section 38-766 and subsection A of this section, at a retired member's election, a retired member may return to work as a state elected official who is subject to term limits and still be eligible to receive retirement benefits.

C. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

D. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days after returning to work.

E. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

F. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

**38-766.02. Retired members; return to work; employer contribution payments; exception; definitions**

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work with an ASRS employer in any capacity in a position ordinarily filled by an employee of the employer or in a position that is similar in duties and responsibilities to that of a position ordinarily filled by an employee of the employer. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two percent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. An employer is not required to pay contributions at an alternate contribution rate on behalf of a retired member under subsection A of this section if the retired member returns to work with the employer in a position that is currently filled by an employee of the employer who is an active member and for which the employer is currently required to pay and is paying contributions on behalf of the active member in that same position pursuant to sections 38-736 and 38-737. An employer may pay contributions at an alternate contribution rate for a retired member who meets the requirements for an exemption under this subsection.

G. For contributions made pursuant to subsection F of this section beginning July 1, 2019, if ASRS and the employer determine that the alternate contribution rate does not apply to a retired member who returns to work for whom the employer has paid contributions at the alternate contribution rate,

the employer may request an employer credit, not including interest, for those contributions within ninety days after the end of the fiscal year in which the contributions were paid. If ASRS determines that an employer credit is not feasible, ASRS shall issue a refund to an employer in a form determined by ASRS.

H. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten percent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

**38-767. Benefit increases: applicability**

A. For a member whose membership commenced before the effective date of this amendment to this section, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which

an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.
3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member who was eligible for an annual benefit increase pursuant to subsection A of this section had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.
2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.
3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined

contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

#### 38-768. Minimum retirement benefit

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members, is \$600.
2. For beneficiaries, is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection C is not eligible for a minimum benefit as provided by this section.

#### 38-769. Maximum retirement benefits; termination; definitions

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In

addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an

employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

### 38-770. [Eligible rollover distribution: definitions](#)

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections allowed in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D,

paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) Beginning January 1, 2008, a Roth individual retirement account described in section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account that satisfies the requirements of section 408(p) of the internal revenue code.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

**38-771. Benefit options for transferred defined contribution program members: definitions**

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by

section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.

3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747,

subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747,

subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.
2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.
3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.
4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this

section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:

1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.
5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.
6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.
7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.
8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

**38-772. Prior service under defined contribution program administered by ASRS; definitions**

- A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.
- B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.
- C. For the purposes of this section:

1. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.
2. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

**38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions**

- A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of the board's acceptance of the domestic relations order, and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall:

1. Not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.
2. Value the member's benefit on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.
2. The name and last known mailing address of each alternate payee who is covered by the order.
3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.
4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.
2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.
2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. If an alternate payee predeceases the member, amounts payable to the alternate payee cease on the death of the alternate payee. ASRS shall cause the amount formerly payable to the alternate payee to revert to the member.

H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

### 38-774. Excess benefit arrangement

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

### 38-775. Required distributions: definitions

A. This section applies for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006. In applying the requirements of this section, the following operational provisions govern:

1. Except as provided in the following sentence, the requirements of this section take precedence over any inconsistent provisions of this article and article 2.1 of this chapter. The rules of this section shall not restrict any form, calculation, adjustment or payment of benefit provided under this article in effect on April 17, 2002, if the form, calculation, adjustment or payment of benefit satisfied section 401(a)(9) of the internal revenue code based on a reasonable and good faith interpretation of that section.

2. All distributions required under this section shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

3. Notwithstanding this section, other than paragraph 2 of this subsection, distributions may be made under a designation made before January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal responsibility act of 1982 (P.L. 97-248) and the provisions of this article that relate to that section.

B. The member's entire interest shall be distributed, or begin to be distributed, to the member not later than the member's required beginning date.

C. If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, not later than as follows:

1. If the member's surviving spouse is the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained seventy-two years of age, if later.

2. If the member's surviving spouse is not the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. For purposes of this subsection and subsection G of this section, distributions are considered to begin on the member's required beginning date or the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection, the date distributions are considered to begin is the date distributions actually commence.

4. If the member dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date prescribed in paragraph 1 or 2 of this subsection as long as the member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the member's death. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the member or the surviving spouse begin, this paragraph applies as if the surviving spouse were the member.

D. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made pursuant to subsections E, F and G of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions shall be made pursuant to the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the internal revenue code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury that apply to individual accounts.

E. The following provisions govern the determination of the amount to be distributed each calendar year:

1. If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year.

(b) The distribution period shall be over a life or lives or over a period certain not longer than the period described in subsection F or G of this section.

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum allowed.

(d) Payments shall either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics.

(ii) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit on death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection F of this section dies or is no longer the member's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the internal revenue code.

(iii) To provide cash refunds of employee contributions on the member's death.

(iv) To pay increased benefits that result from a plan amendment.

2. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection C, paragraph 1 or 2 of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bimonthly, monthly, semiannually or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

3. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

F. The following provisions govern annuity distributions that commence during a member's lifetime:

1. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in question and answer number 2 of section 1.401(a)(9)-6 of the regulations issued by the United States secretary of the treasury. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence applies to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches seventy years of age, the applicable distribution period for the member is the distribution period for seventy years of age under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury plus the excess of seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

G. The following provisions govern minimum distributions if a member dies before the date distributions begin:

1. Except as provided in subsection C, paragraph 4 of this section, if the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning not later than the time prescribed in subsection C, paragraph 1 or 2 of this section, over the life of the designated beneficiary or over a period certain not exceeding either of the following:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies before distributions to the surviving spouse begin, this subsection applies as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection C, paragraph 1 of this section.

H. If a member dies after the member's required beginning date and the member had not commenced distribution of retirement benefits, ASRS shall treat the member as having commenced distribution of retirement benefits on the member's required beginning date. Notwithstanding section 38-776, ASRS shall determine the member's retirement benefit as a straight annuity as of the date of the member's required beginning date. The member's estate is entitled to the member's benefit payments and any remaining member contributions on account shall be disbursed pursuant to section 38-763.

I. For the purposes of this section:

1. "Designated beneficiary" means the individual who is designated as the member's beneficiary to receive benefits under this article and is the designated beneficiary under section 401(a)(9) of the internal revenue code and question and answer number 1 of section 1.401(a)(9)-4 of the regulations issued by the United States secretary of the treasury.

2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection C of this section.

3. "Life expectancy" means life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury.

4. "Required beginning date" means the date payment of a member's benefits shall commence in accordance with section 401(a)(9)(C) of the internal revenue code.

### 38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, an existing contract or a court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

38-781. Supplemental employee deferral plan; public employees; administration; immunity; definitions

A. One or more supplemental employee deferral plans may be established pursuant to this section to provide public employees an opportunity to save additional tax-deferred monies for retirement.

B. ASRS may establish, administer, manage and operate supplemental employee deferral plans for employers.

C. ASRS may:

1. Employ services it deems necessary, including legal services, for the operation and administration of the plans.

2. Administer the plans through contracts with multiple vendors.

3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plans.

4. For the purposes of this section, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

D. A supplemental employee deferral plan does not replace an employee's existing state defined benefit retirement plan.

E. If an employer, including this state, elects to participate in a supplemental employee deferral plan, any employee of the employer who meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan may participate in the supplemental employee deferral plan.

F. Notwithstanding subsection E of this section, on or after July 1, 2022, an employee of an employer who is not eligible to participate in a public retirement system established by article 3, 3.1, 4, 4.1 or 6 of this chapter may elect to participate in a supplemental employee deferral plan if the employee meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan.

G. Employee participation in a supplemental employee deferral plan requires the participant's employer to make salary reductions from the participant's compensation at no cost to the employee, ASRS or any vendor retained by ASRS and contribute such salary reductions to the plan. An employer may make employer contributions to the supplemental employee deferral plan if the plan allows. The employer shall submit any reports required by the plan. If the participant is an active member, any compensation deferred by an employee under a plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits provided in this article earned by any employee participating in the plan.

H. Employee contributions and earnings on employee contributions are immediately vested. Employer contributions, if any, and the earnings on employer contributions shall vest according to the schedule established by the employer, if the employer completes and submits a schedule to ASRS. If the employer does not complete and submit a schedule to ASRS, employer contributions, if any, and the earnings on employer contributions shall vest according to the default schedule established by ASRS.

I. Notwithstanding any other law, this state and its officers and employees, the board and ASRS are immune from civil liability and are not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury arising out of the supplemental employee deferral plan.

J. A political subdivision or a political subdivision entity that is not participating in ASRS may elect to allow its employees to participate in a supplemental employee deferral plan that is overseen by ASRS pursuant to this section by entering into an agreement with ASRS. A political subdivision or political subdivision entity that elects to allow its employees to participate in a supplemental employee deferral plan pursuant to this subsection:

1. Is not an employer for the purposes of this article and its employees are not members for the purposes of this article.

2. May not provide any information indicating or implying that the political subdivision or political subdivision entity offers any ASRS benefits other than participation in a supplemental employee deferral plan pursuant to this subsection. A political subdivision or political subdivision entity that violates this paragraph may not elect to allow new employees to participate in a supplemental employee deferral plan pursuant to this subsection until the violation is corrected at the discretion of ASRS.

3. May elect to join ASRS pursuant to section 38-729.

K. For the purposes of this section:

1. "State" means this state, including any department, office, board, commission, agency or university, but does not mean any school district or community college district.

2. "Supplemental employee deferral plan" means a tax deferred annuity described in section 403(b) of the internal revenue code, including a custodial account described in 403(b)(7) of the internal revenue code, and an eligible deferred compensation plan described in section 457(b) of the internal revenue code. A supplemental employee deferral plan shall comply with all applicable provisions of the section of the internal revenue code under which such plan is adopted and maintained.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not

use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to

subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement

system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their

provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

[38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions](#)

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if

the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

(b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement

increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 38-791. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 8-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

### 38-793. Violation: classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

### 38-794. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

### 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member

develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

#### 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

#### 38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

#### 38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

#### 38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

#### 38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

#### 38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines

pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it

includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

#### 38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### 38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

#### 38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

#### 38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

#### 38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing or has contributed.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

### **38-922. Transfer or redemption of service credits**

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

[38-923. Transfer of service credits between municipal retirement systems and special retirement plans: definitions](#)

A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system

or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

C. An active or inactive member of a retirement system or plan of a municipality of this state or of the elected officials' retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

D. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.

2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the retirement system or plan.

(c) Is not currently making contributions to the retirement system or plan.

(d) Has not withdrawn contributions from the retirement system or plan.

3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

#### 38-924. Transfer of service credits

A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:

1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.

2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.

C. If a member decides to transfer:

1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.

D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

**C-8**

**ARIZONA STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-205, R2-8-207



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 13, 2024

**SUBJECT: STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-205, R2-8-207

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System Board (ASRS) seeks to amend two (2) rules in Title 2, Chapter 8, Article 2 related to Health Insurance Premium Benefit. Specifically, the ASRS seeks to amend its rules relating to the health insurance premium benefit in order to clarify when an employer must provide updated health insurance information and when a member may cease to be eligible for a premium benefit.

The ASRS indicates, without this rulemaking, members will not have adequate notice about how they may not be eligible to continue receiving a health insurance premium benefit. The ASRS indicates notice of such information is necessary in order to ensure that such health benefits are properly disbursed. By promulgating these rules, the ASRS indicates members will have a better understanding of when they are eligible for a health insurance premium benefit and what information an employer must keep updated with the ASRS. Increasing understanding of how a member may be eligible for health insurance premium benefits will increase the member's understanding of how the ASRS processes such benefits and reduce confusion, which will reduce burden on the public.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The ASRS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The ASRS states that it needs to amend its rules relating to the health insurance premium benefit to clarify when an employer must provide updated health insurance information and when a member may cease to be eligible. The ASRS believes that by promulgating these rules, members will have a better understanding of when they are eligible for a health insurance premium benefit and what information an employer must keep updated with the ASRS. The ASRS states that the rule will have minimal economic impact, if any, because it merely clarifies what information an employer must communicate to the ASRS and when a member may no longer be eligible to receive a premium benefit. Stakeholders include the ASRS and all employees and members of the ASRS and their beneficiaries. The ASRS indicates it currently has a total membership of approximately 652,864 and 664 employers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS administers health insurance premium benefits.

6. **What are the economic impacts on stakeholders?**

The ASRS states that the rulemaking does not directly affect state agencies and does not provide any benefits or impose any costs on political subdivisions. They state no businesses, of any size, are directly affected by the rulemaking. The ASRS believes there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The ASRS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The ASRS indicates it received no public comments related to this rulemaking and no one attended the oral proceeding held on September 5, 2023.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The ASRS indicates the proposed amended rules do not require issuance of a permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The ASRS indicates there is no federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the ASRS seeks to amend two (2) rules in Title 2, Chapter 8, Article 2 related to Health Insurance Premium Benefit. Specifically, the ASRS seeks to amend its rules relating to the health insurance premium benefit in order to clarify when an employer must provide updated health insurance information and when a member may cease to be eligible for a premium benefit.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 8, 2024

Ms. Nicole Sornsins, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System Board**

Dear Ms. Sornsins:

The attached final rule package regarding health insurance premium benefits is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 18, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Chief Strategy Officer;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Katie Daigneault

Chief Strategy Officer

**NOTICE OF FINAL RULEMAKING**  
**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**PREAMBLE**

- 1. Article, Part or Section Affected (as applicable)                      Rulemaking Action**

R2-8-205	Amend
R2-8-207	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute:     A.R.S. § 38-714(E)(4)

Implementing statutes:  A.R.S. §§ 38-711 et seq.
- 3. The effective date for the rules:**

  - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

None
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening:  29 A.A.R. 1789, August 18, 2023

Notice of Proposed Rulemaking:  29 A.A.R. 1775, August 18, 2023
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:                             Jessica A.R. Thomas, Rules Writer

Address:                         Arizona State Retirement System  
3300 N. Central Ave., Ste. 1400  
Phoenix, AZ 85012-0250

Telephone:                       (602) 240-2039

E-Mail:                            [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The ASRS needs to amend its rules relating to the health insurance premium benefit in order to clarify when an employer must provide updated health insurance information and when a member may cease to be eligible for a premium benefit.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No study was reviewed.

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

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies what information an employer must communicate to the ASRS and when a member may no longer be eligible to receive a premium benefit.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on September 5, 2023.

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

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT**

Section

R2-8-205. Premium Benefit Documentation

R2-8-207. Optional Premium Benefit

**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT**

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, or removed from, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth; and
    - d. Medicare number, if applicable.
  - 7. The old and new premium amounts for Coverage;
  - 8. The effective date of the change, deletion, and/or enrollment;
  - 9. The Employer's name and telephone number;
  - 10. A certification by the Employer representative's dated signature that the information is current and correct.

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004, is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  - 1. The retired member elects a retirement option under A.R.S. § 38-760; and
  - 2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  - 1. The retired member's Social Security number or U.S. Tax Identification number;
  - 2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
  - 3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:

- a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
- a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E.** In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F.** A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G.** Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H.** Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I.** Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).
- J.** The Optional Premium Benefit shall terminate if the member is no longer receiving a Joint & Survivor or Period-Certain annuity.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to the health insurance premium benefit in order to clarify when an employer must provide updated health insurance information and when a member may cease to be eligible for a premium benefit.

a. The conduct and its frequency of occurrence that the rule is designed to change:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. An employer must provide updated health insurance information for retirees and failure to do so may affect how the ASRS administers the health insurance premium benefit.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Without this rulemaking, members will not have adequate notice about how they may not be eligible to continue receiving a health insurance premium benefit. Notice of such information is necessary in order to ensure that such health benefits are properly disbursed. By promulgating these rules, members will have a better understanding of when they are eligible for a health insurance premium benefit and what information an employer must keep updated with the ASRS. Increasing understanding of how a member may be eligible for health insurance premium benefits will increase the member's understanding of how the ASRS processes such benefits and reduce confusion, which will reduce burden on the public.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how the ASRS administers the health insurance premium benefit, thereby increasing understandability of how members' benefits may be affected, thereby increasing the efficiency of the administration. Clarifying how a member may be eligible for a health insurance premium benefit and how an employer must provide health insurance information will ensure that payment efforts are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the applicable health insurance requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS manages health insurance premium benefits.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies what information an employer must communicate to the ASRS and when a member may no longer be eligible to receive a premium benefit.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All employers and members of the ASRS, as well as their beneficiaries, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 652,864 and 664 employers.

5. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

a. Identification of the small business subject to the rulemaking:

No businesses, regardless of size, are subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

Not applicable.

c. Description of methods that may be used to reduce the impact on small businesses:

Not applicable.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

All ASRS employers, members, and beneficiaries are directly affected by the rulemaking. The effect has been previously described above.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS administers health insurance premium benefits.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
 April 1, 2023 through June 30, 2023

*Section R2-8-301 numbering corrected and subsection reference under the “Estimated Social Security disability income amount” definition corrected. No other changes have been made to this Chapter since Supp. 22-3 (Supp. 23-2).*

**Questions about these rules? Contact:**

Board: Arizona State Retirement System  
 Address: 3300 N. Central Ave., Suite 1400  
 Phoenix, AZ 85012-0250  
[Website: https://www.azasrs.gov](https://www.azasrs.gov)  
 Name: Jessica A.R. Thomas, Rules Writer  
 Telephone: (602) 240-2039  
[Email: Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**PREFACE**

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
 ADMINISTRATIVE RULES DIVISION

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

**RULE HISTORY**

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

**AUTHENTICATION OF PDF CODE CHAPTERS**

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

**HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

**ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

**PERSONAL USE/COMMERCIAL USE**

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-711 et seq.

**Supp. 23-2**

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. RETIREMENT SYSTEM**

Section		
R2-8-101.	Repealed .....	4
R2-8-102.	Repealed .....	4
R2-8-103.	Repealed .....	4
R2-8-104.	Definitions .....	4
R2-8-105.	Repealed .....	5
R2-8-106.	Reserved .....	5
R2-8-107.	Reserved .....	5
R2-8-108.	Reserved .....	5
R2-8-109.	Reserved .....	5
R2-8-110.	Reserved .....	5
R2-8-111.	Reserved .....	5
R2-8-112.	Reserved .....	5
R2-8-113.	Emergency Expired 5	
R2-8-114.	Emergency Expired .....	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement .....	7
R2-8-118.	Application of Interest Rates .....	8
R2-8-119.	Expired .....	8
R2-8-120.	Repealed .....	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions .....	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	9
Table 1.	Expired .....	9
Table 2.	Expired .....	9
Table 3.	Repealed .....	9
Table 3A.	Expired 10	
Table 3B.	Expired .....	10
Table 4.	Expired 10	

Table 4A.	Repealed .....	10	
Table 4B.	Repealed .....	10	
Table 4C.	Repealed .....	10	
Table 5.	Expired		
	10		
Table 6.	Expired		
	10		
Table 7.	Expired		
	11		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		11
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application		
	12		
R2-8-127.	Re-Retirement Application		
	15		
R2-8-128.	Joint and Survivor Retirement Benefit Options		
	16		
R2-8-129.	Period Certain and Life Annuity Retirement Options		
	.....	16	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant		
	.....	16	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation		
	.....	18	
R2-8-132.	Survivor Benefit Options		
	19		
R2-8-133.	Survivor Benefit Applications .....	20	
Table 1.	Repealed .....	22	
Table 2.	Repealed .....	22	
Table 3.	Repealed .....	22	
Table 4.	Repealed .....	22	
Table 5.	Repealed .....	22	
Table 6.	Repealed .....	23	
Table 7.	Repealed .....	23	
Table 8.	Repealed .....	23	
Table 9.	Repealed .....	23	
Table 10.	Repealed .....	23	
Table 11.	Repealed .....	23	
Exhibit A.	Repealed .....	23	
Exhibit C.	Repealed .....	23	
Exhibit G.	Repealed .....	25	
Exhibit H.	Repealed .....	25	
Exhibit I.	Repealed .....	26	
Exhibit J.	Repealed .....	26	
Exhibit K.	Repealed .....	26	

**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT**

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)*

*(Supp. 17-2).*

*Article 2,*

*consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section			
R2-8-201.	Definitions .....	27	
R2-8-202.	Premium Benefit Eligibility and Benefit Determination		28
R2-8-203.	Payment of Premium Benefit .....	28	
R2-8-204.	Premium Benefit Calculation .....	29	
R2-8-205.	Premium Benefit Documentation .....	29	
R2-8-206.	Six-Month Reimbursement Program .....	29	
R2-8-207.	Optional Premium Benefit .....	30	

**ARTICLE 3. LONG-TERM DISABILITY**

*Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).*

Section			
R2-8-301.	Definitions .....	31	
R2-8-302.	Application for Long-Term Disability Benefit .	31	
R2-8-303.	Long-Term Disability Calculation .....	31	
R2-8-304.	Payment of Long-Term Disability Benefit ...	32	
R2-8-305.	Social Security Disability Appeal .....	32	
R2-8-306.	Approval of Social Security Disability .....	32	

**ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	
	32	
R2-8-402.	General Procedures	
	32	
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	32
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	
	.....	33
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	33

**ARTICLE 5. PURCHASING SERVICE CREDIT**

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	
	34	
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	35
R2-8-503.	Requirements Applicable to All Service Credit Purchases	36
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	
	.....	36
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	36
R2-8-506.	Cost Calculation for Purchasing Service Credit	36
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	36
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	
	.....	37
R2-8-509.	Required Documentation and Calculations for Military Service Credit	
	.....	37
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	
	.....	38
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	
	.....	39
R2-8-512.	Purchasing Service Credit by Check, Cashier’s Check, or Money Order	
	.....	39
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	
	39	
R2-8-513.01.	Irrevocable PDA and Transfer of Employment to a Different Employer	
	.....	41
R2-8-513.02.	Termination Date	
	41	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	.....	41
R2-8-515.	Repealed .....	42
R2-8-516.	Expired .....	42
R2-8-517.	Expired .....	42
R2-8-518.	Repealed .....	42
R2-8-519.	Purchasing Service Credit by Termination Pay	
	43	
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	.....	43
R2-8-521.	Adjustment of Errors	
	44	

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	44	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	.....	44
R2-8-603.	Petition for Rulemaking	
	44	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	.....	44
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	.....	44
R2-8-606.	Oral Proceedings	
	45	
R2-8-607.	Petition for Delayed Effective Date	
	45	

## ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section		
R2-8-701.	Definitions	
	45	
R2-8-702.	General Information	
	45	
R2-8-703.	Employer's Discovery of Error	
	46	
R2-8-704.	Member's Discovery of Error	
	46	
R2-8-705.	ASRS' Discovery of Error	
	46	
R2-8-706.	Determination of Contributions Not Withheld	
	46	
R2-8-707.	Submission of Payment	
	47	
R2-8-708.	Expired .....	47
R2-8-709.	Repealed .....	47

## ARTICLE 8. RECOVERY OF OVERPAYMENTS

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section		
R2-8-801.	Definitions .....	47
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	47
R2-8-803.	Reimbursement of Overpayments	
	48	
R2-8-804.	Collection of Overpayments from Forfeiture	
	48	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	48
R2-8-806.	Collection of Overpayments from Survivor Benefit	
	.....	49
R2-8-807.	Collection of Overpayments from LTD Benefit	
	49	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	49
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	49
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	49

## ARTICLE 9. COMPENSATION

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section		
R2-8-901.	Definitions .....	49
R2-8-902.	Remitting Contributions .....	49
R2-8-903.	Accrual of Credited Service .....	50
R2-8-904.	Compensation from An Additional Employer .	50
R2-8-905.	Expired .....	50

## ARTICLE 10. MEMBERSHIP

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section		
R2-8-1001.	Definitions	
	50	
R2-8-1002.	Employee Membership	
	50	
R2-8-1003.	Charter School Employer Membership .....	51
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	.....	52
R2-8-1005.	Employer Reporting	

R2-8-1006.	53	Prior Service Purchase Cost for New Employers
53		

**ARTICLE 11. TRANSFER OF SERVICE CREDIT**

Section		
R2-8-1101.	Definitions	
	54	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	54
R2-8-1103.	Transferring Service to Other Retirement Plans	
	.....	55

## ARTICLE 1. RETIREMENT SYSTEM

### R2-8-101. Repealed

#### Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-102. Repealed

#### Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-103. Repealed

#### Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
  - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
  - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
  - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
  - a. The requirements of A.R.S. § 38-773(C);
  - b. The date of the member and alternate payee's marriage;
  - c. The date of divorce or the date in which the community property interest ended;
  - d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
  - e. How the member's ASRS benefits should be split in specific amounts for the following possible events:
    - i. The member's retirement;
    - ii. Return of contributions and termination of membership according to R2-8-115; and
    - iii. The death of the member prior to retirement;
  - f. Whether the member may transfer all ASRS service credit to another retirement system;
  - g. Whether the member is required to maintain the alternate payee as the member's beneficiary;
  - h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
  - i. The judge's dated signature.
10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended

by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;
  - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
  - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
  - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
  - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
  - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

- j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
  - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
  - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
  - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
- a. The type of eligible retirement plan; and
  - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  - 6. The Employer's name and telephone number;
  - 7. The Employer Number;
  - 8. The name and title of the authorized Employer representative;
  - 9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

#### **Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-116. Alternate Contribution Rate**

- A. For purposes of this Section, the following definitions apply:
- 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  - 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  - 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  - 4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest	Assumed Actuarial Investment	Interest Rate Used to Determine Return of Contributions Upon

Rate Change	Earnings Rate	Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

#### **Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

#### **R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  1. The interest and investment return rate assumptions are determined by the Board.
  2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

#### **Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

#### **Table 1. Expired**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### **Table 2. Expired**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### **Table 3. Repealed**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614,

effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former

Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3).

Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and

- b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
3. "Compensation" means the same as in A.R.S. § 38-711(7).
4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
  - a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
  1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

#### **Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

#### **R2-8-126. Retirement Application**

- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
  1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  3. "Applicable retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or
    - b. The date a member re-retires from the ASRS after returning to active membership.
  4. "Conservator" means the same as in A.R.S. § 14-7651.
  5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  6. "Legal documentation" means:
    - a. One document issued from a United States government entity; or
    - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
  7. "LTD" means the same as in R2-8-301.
  8. "Irrevocable PDA" means the same as in R2-8-501.
  9. "On File" means the same as in R2-8-115.
  10. "Original retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. The member's current mailing address; if not On File with ASRS;
  5. The member's date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary's full name;
    - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary's date of birth;
    - d. The beneficiary's relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
    - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member's spouse's full name; and
    - d. The member's spouse's notarized signature;
  12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  1. The type of account and account number to which the member is electing to roll over;
  2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
  - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  - 2. The member's total salary paid during their last fiscal year;
  - 3. The member's compensation for the last pay period;
  - 4. The name and title of the authorized Employer representative;
  - 5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  - 1. The member's full name;
  - 2. The member's bank account routing number;
  - 3. The member's bank account number; and
  - 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

#### **Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D)

effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-127. Re-Retirement Application**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re- retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C.** If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

#### **R2-8-128. Joint and Survivor Retirement Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C.** A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F.** Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-129. Period Certain and Life Annuity Retirement Options**

- A.** The definitions in R2-8-126 apply to this Section.

- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
  - a. Full name;
  - b. Social Security number, if the contingent annuitant is a U.S. citizen;
  - c. Date of birth; and
  - d. Legal relationship to the member.
- 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
  - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
- 8. Whether the spouse's consent is not required because:
  - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.
- Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

- A. The definitions in R2-8-126 apply to this Section.
- B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
  - 1. The Member's full name and one or more of the following information:
    - a. The Member's Social Security number or U.S. Tax Identification number; or
    - b. The Member's address; or
    - c. The Member's date of birth;
  - 2. The following information for the beneficiary:
    - a. The full name of the person or entity the member is designating as beneficiary;
    - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
    - c. The percentage of the benefit the member is allocating to the beneficiary; and
  - 3. The member's notarized signature.
- C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E. Effective July 1, 2013, a married member:
  - 1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary;
  - 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate contingent annuitant; or
    - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
  - 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
  - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
  2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** A DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:
          - (a) They are exempt from backup withholding, or
          - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
          - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
          - (3) They are a legal resident of the United States, unless they are an estate or trust.
        - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
        - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan

- will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or
      - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
    - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
    - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
    - f. If there are other surviving heirs, then the name and relationship of each surviving heir;

- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496,









#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

#### Exhibit M, Table 6. Repealed

#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

### ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

#### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 04-3).

07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  - 1. The actual cost of the Coverage premium; or
  - 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

- a. First and last name;
  - b. Social Security number or U.S. Tax Identification number;
  - c. Date of birth; and
  - d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
  - a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
  - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

### **ARTICLE 3. LONG-TERM DISABILITY**

#### **R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
3. "Estimated Social Security disability income amount" means the same as in R2-8-801(1).
4. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
5. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
6. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
7. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Numbering corrected and subsection reference under the "Estimated Social Security disability income amount" definition corrected (Supp. 23-2).

#### **R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

#### **R2-8-303. Long-Term Disability Calculation**

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

#### **R2-8-304. Payment of Long-Term Disability Benefit**

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.
- D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

#### **R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

### **ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

#### **R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E) (1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-402. General Procedures**

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

#### **R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
  - 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  - 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
  - 1. The decision the agency is making in response to the letter of appeal; and
  - 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
  - 1. The agency action the ASRS is taking in response to the letter of appeal; and
  - 2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
  - 1. The name and mailing address of the member, employer, or other person filing the Request;
  - 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  - 3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
  - 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  - 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I. The Board has delegated to each Health Plan Vendor the authority to:
  - 1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  - 2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  - 3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  - 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

### **ARTICLE 5. PURCHASING SERVICE CREDIT**

#### **R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;

- b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
  19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
  20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
  21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
  22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
  23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
  24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
  25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
    - a. After accepting an offer to work for a new Employer;
    - b. While working as an active member for a different Employer; or
    - c. Before returning to work with any Employer within 120 days of terminating employment.
  26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
  27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
  28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
  1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
  1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
  1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
  1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
  - 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  - 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
  - 1. Leave of Absence Service;
  - 2. Military Service;
  - 3. Forfeited Service; and
  - 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
  - 1. The amount the Eligible Member wants to apply, and
  - 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
  - 1. Leave of Absence Service;
  - 2. Military Service; and
  - 3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

- A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
  - 1. One year of credited service in any plan year, or
  - 2. One month of credited service in any one calendar month.
- B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.
- C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
  - 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  - 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
  - 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and

2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
  1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
  1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
  1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
  - 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
  - 1. The name and mailing address of the Other Public Service employer;
  - 2. The position the Eligible Member held while working for the Other Public Service employer;
  - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or

- c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
  - C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
  - 1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
  - 2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
    - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
    - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
    - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
      - i. Terminating employment;
      - ii. Terminating LTD without returning to work with an Employer; or
      - iii. The effective ASRS retirement date;
    - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
    - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
    - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
    - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
  - 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;

- c. Understands that the election to use Termination Pay is binding and irrevocable;
  - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
  - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
  - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
  - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  2. Limit the payroll deduction time period to a maximum of 520 payments; and
  3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
  2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  3. Eligible Member terminates all ASRS employment without transferring employment; or
  4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
  2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
    - c. The ASRS shall not accept the following fund types:
      - i. Roth funds;
      - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      - iii. Inherited IRA;
      - iv. Coverdale Education Savings Account funds;
      - v. Hardship distributions;
      - vi. Funds not includable in gross income;
      - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      - ix. One of a series of substantially equal periodic payments made for 10 years or more;
      - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
    - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
    - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
    - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
    - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
- D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
  1. The Eligible Member's full name;
  2. The last 4 digits of the Eligible Member's Social Security number;
  3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
  4. The Authorized Representative's name and title;
  5. The Authorized Representative's telephone number; and
  6. Certification by the Authorized Representative's dated signature that:
    - a. The plan is either:
      - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
      - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
      - iii. An annuity contract described in IRC § 403(b); or
      - iv. An IRA described in A.R.S. § 38-747(H)(3);
    - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
    - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and

- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
  - 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  - 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  - 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
  2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  3. The signature of the person submitting the petition, and
  4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the person submitting the objection;
  2. Identification of the rule;
  3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  4. The signature of the person submitting the objection; and
  5. The date the person signs the objection.
- B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
  2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  4. Explain the background and general content of the proposed rulemaking;
  5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
1. Name and current address of the person submitting the petition;
  2. Identification of the proposed rule;
  3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  4. Reason why the public interest will not be harmed by the delayed effective date;
  5. Signature of the person submitting the petition; and

6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B.** The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C.** The ASRS shall not waive payment of contributions or interest owed under this Article.
- D.** If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
  
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A.** If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
  - c. The member's position title during the date range listed in subsection (A)(2)(b);
  - d. Whether the member was Engaged to Work for the Employer; and
  - e. Dated signature of the member certifying the member understands:
    - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
    - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, Employer and the member, an invoice with the following:
  - 1. The amount of Eligible Service for which contributions were not withheld,
  - 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  - 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  - 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  - 5. The dollar amount of contributions to be paid to the ASRS by the member.
- F.** The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022),

with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-708. Expired**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

**R2-8-801. Definitions**

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A.** Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B.** A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C.** An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- D.** If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- E.** A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- F.** If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  - 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  - 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  - 1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  - 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  - 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  - 1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  - 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION**

**R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
  - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired**

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

## ARTICLE 10. MEMBERSHIP

### R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

#### Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

### R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.

- J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

- A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the

political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

- C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1005. Employer Reporting**

- A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;

7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
  1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1006. Prior Service Purchase Cost for New Employers**

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
  1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
  1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.
- G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.
- H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

### **ARTICLE 11. TRANSFER OF SERVICE CREDIT**

#### **R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.

5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
  1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
  - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  - 2. The Member’s Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  - 1. The member’s full name;
  - 2. The last four digits of the member’s Social Security number;
  - 3. The name of the Other Retirement Plan; and
  - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  - 1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
  - 2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  - 1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  - 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.
- H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee’s notarized signature.

**Historical Note**

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

### 38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
  - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
  - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
  - (iv) Payments for allowances.
  - (v) Reimbursements for employee business expenses or employee personal expenses.
  - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
  - (vii) Payments made in lieu of any employer-paid insurance coverage.
  - (viii) Workers' compensation, unemployment compensation payments and disability payments.
  - (ix) Merit awards pursuant to section 38-613.
  - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
  - (xi) Payments made in the form of goods or services in lieu of gross wages.
  - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
  - (xiii) Payments in excess of the section 401(a)(17) of the internal revenue code limits established in section 38-746.
  - (xiv) Payments for any other employment benefit.
  - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
  - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
  - (c) Means any person receiving a benefit under ASRS.
  - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
  - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
  - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
    - (i) Is not otherwise an employee of an employer.
    - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
    - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

**38-712. ASRS purpose: trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.
2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.
3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.
4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming a person with a disability.
5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.

B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

38-713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.

2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

- 1. A portfolio manager acting in a fiduciary capacity.
- 2. A securities analyst.
- 3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
- 4. A chartered financial analyst in good standing as determined by the CFA institute.
- 5. A professor at the university level teaching economics or investment related subjects.
- 6. An economist.
- 7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

- 1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.
- 2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year not later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The

report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

K. In determining the past service funding period, the board shall seek to improve the funded status whenever the trust fund established by section 38-712 is less than one hundred percent funded.

**38-715. Director: powers and duties**

A. The board shall appoint a director. The director shall serve at the pleasure of the board.

B. The director shall appoint a deputy director and assistant directors with the approval of the board.

C. The director, under the supervision of the board, shall:

1. Administer this article.
2. Be responsible for the recruitment, hiring and day-to-day management of employees.
3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.
4. Prescribe procedures to be followed by employers for remitting data and monies to ASRS and for receiving data and monies from ASRS.

5. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account, the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

4. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. For current or prospective employees of ASRS, the director, under the supervision of the board, may:

1. Conduct criminal records checks. The director may require a current or prospective employee to submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. Conduct credit checks for accounting, investment and other finance-related positions. The director shall establish a policy for conducting credit checks on a current employee that includes the method for determining when a credit check may be conducted, retaining records relating to the reason for the credit check and notifying an employee of the credit check and the result of the credit check.

F. The director and all persons employed by the director are subject to section 38-611 and title 41, chapter 4, article 4.

G. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following ASRS positions:

1. Director.
2. Deputy director.
3. Chief investment officer.
4. Fiduciary or investment counsel.

**38-716. Employers' responsibilities under the system**

In addition to any other requirements of this article or article 2.1, 7 or 8 of this chapter, an employer of a member shall:

1. Cooperate and collaborate with ASRS and follow all ASRS procedures to ensure the proper enrollment of members in the system.
2. Submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to make eligibility determinations and for the proper administration of the plan.
3. Attend the ASRS annual training conference.

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.

**38-718. Investment managers: general powers and duties: investment of monies: limitations**

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member

nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

### 38-718. Investment managers; general powers and duties; investment of monies; limitations

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

**38-719. Interest paid to members and employers**

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

**38-720. ASRS depository**

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

**38-721. Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.

3. Actuarial consulting fees.

4. Retiree payroll.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection E, paragraph 1 and subsection I, paragraphs 2 and 3, section 38-718, subsection D, paragraph 5 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

**38-722. Abandoned monies: disposition**

A. Except as otherwise provided in this section, the trust fund established by section 38-712 is exempt from title 44, chapter 3.

B. Monies in the ASRS trust fund and the LTD trust fund established by section 38-797.02 are presumed abandoned if the apparent owner, as defined in section 44-301, has not communicated in writing with ASRS and has not otherwise indicated an interest in the monies for the three year period following the required beginning date of distributions pursuant to section 38-775.

C. At the time monies are presumed abandoned pursuant to subsection B of this section, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.

D. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.

E. Before monies are presumed abandoned, ASRS shall attempt to contact the apparent owner in writing. If the apparent owner is a member, beginning five years before the apparent owner's required beginning date of distributions pursuant to section 38-775 and for three years after that date, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a retirement benefit. If the apparent owner is a beneficiary, beginning in the calendar year containing the fifth anniversary of the member's death and for three years, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a survivor benefit. If this notice is returned by the postal authority as undeliverable, ASRS shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with ASRS, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails and the base amount of the unclaimed monies is three hundred dollars or more, ASRS may use the services of a people search service. A fee imposed by the people search service shall not be deducted from the member's benefit and these expenditures are continuously appropriated and shall be paid from the administration account established pursuant to section 38-721 in the amount deemed necessary by the board.

F. If at any time an owner, as defined in section 44-301, establishes an entitlement in the monies, ASRS shall withdraw the monies from either the ASRS trust fund or the LTD trust fund, whichever is applicable, and pay the owner the monies or benefit to which the owner is entitled pursuant to this article or article 2.1 of this chapter, including interest at a rate determined by ASRS, if applicable.

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-724. Surrender of property subject to levy; authority to release levy and return property; definitions

A. Any person in possession of, or obligated with respect to, property subject to levy on which a levy has been made, on request of ASRS, shall surrender the property or discharge the obligation to

ASRS, except the part of the property that is, at the time of the request, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property subject to levy, on request by ASRS, is liable in person and estate to this state in a sum equal to the value of the property not so surrendered, but not exceeding the amount of debt for the collection of which the levy has been made, with costs and interest on the sum at the interest rate determined by the board from the date of the levy or, in the case of a levy described in section 38-723, subsection E, from the date the person would otherwise have been obligated to pay the amounts to the debtor. Any amount, other than costs, recovered under this subsection shall be credited against the debt for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property subject to levy on which a levy has been made who, on request by ASRS, surrenders the property or discharges the obligation to ASRS is discharged from any obligation or liability to the debtor with respect to the property arising from the surrender or payment.

D. ASRS may release a levy on all or part of property levied on. The release shall not operate to prevent any subsequent levy.

E. If ASRS determines that property has been wrongfully levied on, ASRS shall return the specific property levied on or an amount of money equal to the value of the property levied on.

F. For the purposes of this section:

1. "Levy" includes the power of distraint and seizure by any means.

2. "Person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, or any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property or to discharge the obligation.

#### 38-725. Financial institutions data match; prohibited disclosure; fee; definition

A. ASRS may enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist ASRS in the collection of monies owed. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. The data exchanges shall include the name, address of record, social security number and any other identifying information for each person who maintains an account at the institution and who owes money as identified by ASRS by name and social security number.

C. ASRS or its agent may disclose a debtor's financial record under this section only in order to enforce the collection of the money the debtor owes to ASRS.

D. ASRS may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

E. For the purposes of this section "financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

**38-727. Eligibility; options**

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this subsection.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. A person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days after employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

9. The following are ineligible for membership in ASRS:

(a) A person who performs services in a hospital, home or other institution as an inmate or patient at the hospital, home or other institution.

(b) A person who performs agricultural labor services, as defined in section 210 of the social security act.

(c) A person who is a nonresident alien temporarily residing in the United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are performed.

(d) A person who performs services for a school, college or university in this state at which the person is enrolled as a student, as defined by the employing institution. The employing institution

shall maintain an appeal process for a person who disagrees with the employing institution's determination that the person is a student and not eligible for membership in ASRS.

(e) A person who performs services under a program designed to relieve the person from unemployment.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. An elected official, as defined in section 38-831, who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability, if the elected official's employer is a participating employer under this article and the elected official is eligible for ASRS service credit for the elected official's service.

#### 38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amount equal to the present value required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan using the actuarial assumptions that are approved by the board. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

J. Notwithstanding any other law, an employee of a political subdivision who was previously a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that public employee retirement system for any period of employment is ineligible to receive service credit from ASRS for the same period of employment.

### 38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The transfer shall be made pursuant to section 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

#### **38-735. Payment of contributions: recovery of delinquent payments**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

#### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions; prepayment; definitions

A. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.

Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1. 401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38-712 or a section 115 trust.

2. ASRS shall determine the following options available to the employer:

(a) The amortization time periods.

(b) The frequency and dates that prepayments can be made.

(c) The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d) Any other options or obligations that the employer may have when entering into this written agreement.

3. The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4. The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38-718.
  5. 401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38-735.
  6. The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.
  7. ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.
  8. Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:
    - (a) In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
    - (b) After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
  9. After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.
  10. If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.
  11. Assets transferred in or out of or held in the ASRS trust fund established by section 38-712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.
  12. The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.
  13. If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax-exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.
- E. In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:
1. Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2. Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F. For the purposes of this section:

1. "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2. "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions.

### 38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit or, if the request is made within one year after the date of overpayment, shall return the contributions to the employer. ASRS may not pay an employer earnings attributable to the excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit. On receipt of an employer credit or return of contributions pursuant to this subsection, the employer shall return any member portion of the returned contributions to the member.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by

ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

E. Notwithstanding any other law, an employer may correct a contributions error pursuant to subsection B of this section by making payment adjustments through the employer's payroll reporting for the contributions that were not submitted if both of the following apply:

1. The adjustment is made within the same fiscal year that the contributions were due to ASRS.

2. The employer obtains written consent from the employee to make the adjustment to the employee's paycheck.

F. Notwithstanding any other law, if an employer pays less than the correct amount of employer or member contributions into ASRS, the correct amount of member contributions may not be paid to ASRS after the death of the member.

### 38-739. Credited service

- A. A member shall not earn more than one year of credited service in any fiscal year.
- B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.
- C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.
- D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.
- E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.
- F. The following years of service are excluded from credited service under this article:
  - 1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.
  - 2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

#### 38-739.01. Credited service retention

Consistent with the compliance statement issued by the United States internal revenue service, an employee who is employed with an ASRS employer in a position that was exempt from ASRS membership because the position was not included in agreements providing for the employee's coverage under the federal old-age and survivors insurance system but on whose behalf the employer has remitted ASRS contributions shall retain credited service for the period of employment for which the employer remitted ASRS contributions on the employee's behalf.

### 38-740. Return of contributions

- A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
  - 1. If the member has less than five years of credited service, ASRS shall disburse all of the member's contributions.
  - 2. If a member has five or more years of credited service, ASRS shall disburse the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738,

subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five percent.
- (b) 6.0 to 6.9 years of credited service, forty percent.
- (c) 7.0 to 7.9 years of credited service, fifty-five percent.
- (d) 8.0 to 8.9 years of credited service, seventy percent.
- (e) 9.0 to 9.9 years of credited service, eighty-five percent.
- (f) 10.0 or more years of credited service, one hundred percent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If ASRS has disbursed an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If ASRS disburses more than the amount due to a member or an alternate payee pursuant to this section, the person who received the overpayment shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

#### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, ASRS shall disburse benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

#### 38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

#### 38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is

derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

**38-744. Leave of absence: credit for leave without pay**

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

**38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
3. Volunteers or is ordered into active military service of the United States as part of a military call-up.
4. One of the following occurs:
  - (a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.
  - (b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

#### 38-746. Compensation limitation: adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

#### 38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) \$40,000 or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred percent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any

other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution from one or more:

- (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

- (b) Annuity contracts described in section 403(b) of the internal revenue code.

- (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

3. Accepting from a member a direct transfer from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code of an amount that would otherwise be eligible to be rolled over to ASRS under the provisions of section 408(d)(3)(A)(ii) of the internal revenue code if the amount had been received by the member and would have otherwise been includible in the member's gross income but for the direct transfer.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.
3. "Defined contribution plan" has the same meaning prescribed in section 38-769.
4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.
5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.
6. "Limitation year" has the same meaning prescribed in section 38-769.
7. "Participating employer" means an employer that participates in ASRS.
8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

**38-748. Employer payments for ineligible contributions; definitions**

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS shall provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

**38-749. Employer termination incentive program; employer payment of actuarial cost; definition**

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

### 38-750. Transfers out of the system

A. If an employee has made an irrevocable election pursuant to section 38-747, subsection B or D and transfers participation to another defined benefit retirement system or plan of this state without a termination of employment, within ninety days after the date of the transfer, ASRS shall transfer to the subsequent defined benefit retirement system or plan the amount the employee paid for the purchase of the credited service plus interest as determined by ASRS.

B. If the assets transferred from ASRS are less than the cost of the benefits accrued relative to the credited service as calculated pursuant to section 38-922, subsection B, paragraph 2, and unless a law otherwise provides, the employee shall elect either to pay the difference to the subsequent defined benefit retirement system or plan or accept a reduced amount of service credits. If the employee elects to pay the difference, the amount paid shall be added to the employee's accumulated contribution account balance. If the employee elects to accept a reduced amount of service credits, the amount of service credits granted shall be equal to the amount of service credits purchased multiplied by the ratio of the amount of assets transferred to the amount calculated pursuant to section 38-922, subsection B, paragraph 2.

C. The transferred employee and the employer shall complete the terms of the irrevocable election by making payments to ASRS.

D. If the employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, on termination of employment the employee shall elect to have ASRS:

1. Promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to elect to have the assets transferred within thirty days after termination of employment, the employee is deemed to have made an election as prescribed in paragraph 2.

2. On written request by the employee, promptly return to the employee the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If no application is received by ASRS within sixty days after termination of employment, ASRS shall issue the payment directly to the employee.

E. If the employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, after termination of employment the employee may elect within thirty days of termination of employment to have ASRS promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to make the election under this subsection, ASRS shall deem the employee as an inactive member of ASRS.

F. If an employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is

receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is eligible to transfer to the retirement system or plan, but the election to transfer terminates the benefit from ASRS on the effective date of the transfer.

G. If an employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is not eligible to transfer to another retirement system or plan.

**38-751. Nonparticipatory employer liability allocation; exemption; definitions**

A. ASRS shall establish a separate fund for an employer, other than a charter school, that is no longer participating in ASRS as a result of any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state, dissolves.
3. Through legislative action, the employer is no longer enrolling new employees in ASRS or no longer contributing to ASRS on behalf of current employees or groups of employees who otherwise would be eligible for ASRS membership.

B. For a nonparticipating employer described in subsection A of this section, ASRS shall allocate an actuarial accrued liability and a designated asset amount to the nonparticipating employer's separate fund as of the nonparticipation date, which shall be calculated as follows:

1. The actuarial accrued liability shall equal the sum of the plan employer actuarial accrued liability and the LTD program employer actuarial accrued liability. Actuarial accrued liability shall be calculated based on the same actuarial assumptions and methods as the actuarial valuation performed immediately preceding the nonparticipating employer's nonparticipation date.

2. The designated asset amount shall equal the sum of the following:

- (a) The plan employer actuarial accrued liability multiplied by the plan funded percentage.
- (b) The LTD program employer actuarial accrued liability multiplied by the LTD program funded percentage.

C. All monies and securities transferred to the nonparticipating employer's separate fund shall be credited to that fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes. ASRS shall make all decisions regarding the nonparticipating employer's separate fund.

D. After establishing the nonparticipating employer's separate fund, the fund shall be adjusted for all of the following:

1. All contributions made by employees of the nonparticipating employer.
2. All contributions made by the nonparticipating employer.

3. All plan, all LTD program and any other benefits paid to the nonparticipating employer's members who are active, inactive, retired or on long-term disability.

4. All plan, all LTD program and any other benefits paid to the survivors of the nonparticipating employer's members.

5. The applicable share of the investment gains and losses.

6. Expenses associated with the administration of the nonparticipating employer's separate fund, including any administrative, development, actuarial, legal, custodial and investment management costs associated with the fund. These expenses shall be paid directly by the nonparticipating employer or included in the employer's liability for the purposes of determining the employer's contribution rate.

E. After establishing the nonparticipating employer's separate fund, the nonparticipating employer and any employees of that employer who are enrolled in ASRS shall continue to have contribution requirements to the nonparticipating employer's separate fund. The contribution requirements shall be calculated as follows:

1. All employees of the nonparticipating employer who are enrolled in ASRS shall continue to make contributions through payroll deductions based on the contribution rate determined for the employees of participating employers of ASRS pursuant to section 38-736.

2. The nonparticipating employer shall continue to make contributions through lump sum payments in accordance with section 38-735, equal to the sum of:

(a) Contributions owed through payroll deductions based on the contribution rate determined for participating employers pursuant to section 38-737.

(b) The amount required to amortize the past service funding requirement in the nonparticipating employer's separate fund over a period that is determined by the board and that is consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the nonparticipating employer's separate fund is less than one hundred percent funded.

F. The ASRS actuary shall determine the actuarial assumptions used to determine the contribution requirements for the nonparticipating employer under subsection E of this section. Notwithstanding section 38-737, the contribution for the nonparticipating employer may not be determined as a percentage of compensation due to the anticipated decline of compensation for employees of the nonparticipating employer participating in ASRS. The nonparticipating employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS at a rate that is consistent with the rate paid by the participating employers. Each fiscal year, amounts that are not remitted through payroll contributions pursuant to this section shall be invoiced to the employer and shall be paid within the same fiscal year the nonparticipating employer is invoiced.

G. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

H. For the purposes of calculating an employer's liability under this section, members who are active, inactive, retired or on long-term disability are considered employees of the nonparticipating employer

if the member's most recent employer was the nonparticipating employer as of the nonparticipation date.

I. This section does not apply to an employer whose existence was terminated by legislative action or otherwise became a nonparticipating employer as described in subsection A of this section on or before January 1, 2013.

J. For the purposes of this section:

1. "LTD program" means the program established by article 2.1 of this chapter.

2. "LTD program employer actuarial accrued liability" means the actuarial accrued liability for the employer's active and inactive members and the open LTD program claims for the employees of the employer as of the nonparticipation date.

3. "LTD program funded percentage" means the total market value of LTD program assets divided by the total LTD program actuarial accrued liabilities, as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the LTD program funded percentage is one hundred percent.

4. "Nonparticipation date" means the date on which the employer is no longer participating in ASRS.

5. "Plan" means the retirement plan established by this article.

6. "Plan employer actuarial accrued liability" means the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for the employer's active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date.

7. "Plan funded percentage" means the plan's total market value of assets divided by the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for all active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the plan funded percentage is one hundred percent.

**38-755. Member's account information: beneficiary designation: spousal consent: confidentiality**

A. ASRS shall make information concerning a member's account accessible to the member in written or electronic form. This information shall include the member's current account balance, contact information, beneficiary election, estimated retirement date and estimated benefit amount.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty percent of the member's account, unless naming or maintaining the current spouse as a beneficiary violates another law, an existing contract or a court order. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. In order to protect a member's identity from fraud, abuse, theft or civil or criminal activity, information about a member is not subject to inspection pursuant to title 39, chapter 1, article 2, except that the following information about a member is subject to inspection:

1. The member's name.
2. Whether the member is an active member as defined in section 38-711, an inactive member as defined in section 38-711 or a retired member as defined in section 38-711.
3. The member's current or most recent employer.
4. For a retired member, the average monthly compensation, as defined in section 38-711, used to calculate the member's retirement benefit.
5. The credited service as defined in section 38-711 on account for an active or inactive member or the credited service used to calculate the retirement benefit for a retired member.
6. The gross pension amount actually paid to a retired member.
7. The most recent retirement date.
8. The current account balance for an active or inactive member.
9. The gross long-term disability program benefit actually paid to a member with a disability pursuant to article 2.1 of this chapter.
10. The amount paid to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
11. The amount of credited service purchased pursuant to section 38-743, 38-744 or 38-745.

E. ASRS shall not permit any unredacted record to be inspected that contains a member's social security number, bank account information, address, telephone number, e-mail address, medical records, health insurance information, beneficiary or survivor information or disability information or any information that is protected by any federal or state law.

**38-756. [Outreach education program](#)**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.
7. The development of a creative promotional program using available media outlets.

C. ASRS shall present, either in person or through the use of electronic means, the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

### 38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. Except as provided in section 13-713, a member's right to the member's normal retirement benefit as described in subsection B of this section is nonforfeitable by an employer or ASRS on attainment of the member's normal retirement date.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a straight life annuity that equals the result of paragraph 1 of this subsection multiplied by paragraph 2 of this subsection when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 percent if the member does not have more than 19.99 years of credited service.

(b) 2.15 percent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 percent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 percent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

### 38-758. Early retirement

A. A member who has attained age fifty, who has terminated employment with all employers and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. For a member whose membership in ASRS commenced before July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three percent for each unit of one or fraction of one by which the sum is less than eighty.

C. For a member whose membership in ASRS commenced on or after July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 at the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this subsection for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixty-second birthday if the member has at least ten years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

#### 38-759. Late retirement; definition

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the member's required beginning date.

C. For the purposes of this section, "required beginning date" has the same meaning prescribed in section 38-775.

#### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor life annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's

effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the life annuity of the member under the same joint and survivor life annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted life annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor life annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor life annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

#### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection E.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

#### **38-763. Survivor benefits after retirement**

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits distributed by ASRS. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

#### **38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. All retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. Except as provided in subsection D of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement

benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

D. The board may pay the entire retirement benefit in a lump sum pursuant to subsection C of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

E. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783 but is not eligible for a benefit increase pursuant to section 38-767.

F. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

G. Notwithstanding subsection H of this section, a member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

H. A member may elect to make changes to a retirement application before the member's retirement date. A member may exercise a onetime election to make changes to the retirement application within sixty days after the member's retirement date. The member may not change the member's retirement date, and any changes made to the retirement application are retroactive to the member's retirement date.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

#### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### **38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.
2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A retired member whose retirement benefits have been suspended pursuant to subsection A of this section shall repay ASRS any retirement benefits received by the member from the date ASRS notifies the member in writing that the member's employment resulted in active membership in ASRS pursuant to subsection A of this section, from the date ASRS determines that the member knew or should have known that the member's employment resulted in membership in ASRS pursuant to subsection A of this section or for any other period that approximates the duration of the violation, as determined by ASRS.

C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

- (a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

- (b) Allows a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

E. A retired member who returns to work pursuant to subsection D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. An employer that engaged the retired member to work pursuant to this section shall pay to ASRS an amount equal to the rate established by the actuary pursuant to section 38-766.02, subsection B for the period starting with the first day the retired member began working after retirement through the earlier of:

1. The date the member terminates employment.
2. The date the member resumes active membership pursuant to subsection A of this section and the member and employer are required to make contributions pursuant to section 38-736, 38-737 or 38-738.

**38-766.01. Retired members; return to work**

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated direct employment with an employer at least three hundred sixty-five consecutive days before returning to work.
3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. Notwithstanding section 38-766 and subsection A of this section, at a retired member's election, a retired member may return to work as a state elected official who is subject to term limits and still be eligible to receive retirement benefits.

C. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

D. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days after returning to work.

E. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

F. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

**38-766.02. Retired members; return to work; employer contribution payments; exception; definitions**

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work with an ASRS employer in any capacity in a position ordinarily filled by an employee of the employer or in a position that is similar in duties and responsibilities to that of a position ordinarily filled by an employee of the employer. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two percent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. An employer is not required to pay contributions at an alternate contribution rate on behalf of a retired member under subsection A of this section if the retired member returns to work with the employer in a position that is currently filled by an employee of the employer who is an active member and for which the employer is currently required to pay and is paying contributions on behalf of the active member in that same position pursuant to sections 38-736 and 38-737. An employer may pay contributions at an alternate contribution rate for a retired member who meets the requirements for an exemption under this subsection.

G. For contributions made pursuant to subsection F of this section beginning July 1, 2019, if ASRS and the employer determine that the alternate contribution rate does not apply to a retired member who returns to work for whom the employer has paid contributions at the alternate contribution rate,

the employer may request an employer credit, not including interest, for those contributions within ninety days after the end of the fiscal year in which the contributions were paid. If ASRS determines that an employer credit is not feasible, ASRS shall issue a refund to an employer in a form determined by ASRS.

H. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten percent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

**38-767. Benefit increases: applicability**

A. For a member whose membership commenced before the effective date of this amendment to this section, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which

an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.
3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member who was eligible for an annual benefit increase pursuant to subsection A of this section had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.
2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.
3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined

contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

#### **38-768. Minimum retirement benefit**

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members, is \$600.
2. For beneficiaries, is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection C is not eligible for a minimum benefit as provided by this section.

#### **38-769. Maximum retirement benefits; termination; definitions**

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In

addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an

employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

### 38-770. [Eligible rollover distribution: definitions](#)

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections allowed in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D,

paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) Beginning January 1, 2008, a Roth individual retirement account described in section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account that satisfies the requirements of section 408(p) of the internal revenue code.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

**38-771. Benefit options for transferred defined contribution program members: definitions**

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by

section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.

3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747,

subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747,

subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.
2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.
3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.
4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this

section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:

1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.

5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.

6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.

7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.

8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

#### 38-772. Prior service under defined contribution program administered by ASRS; definitions

A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.

B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.

C. For the purposes of this section:

1. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

2. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

#### 38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of the board's acceptance of the domestic relations order, and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall:

1. Not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.
2. Value the member's benefit on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.
2. The name and last known mailing address of each alternate payee who is covered by the order.
3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.
4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.
2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.
2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. If an alternate payee predeceases the member, amounts payable to the alternate payee cease on the death of the alternate payee. ASRS shall cause the amount formerly payable to the alternate payee to revert to the member.

H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

### 38-774. Excess benefit arrangement

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

### 38-775. Required distributions: definitions

A. This section applies for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006. In applying the requirements of this section, the following operational provisions govern:

1. Except as provided in the following sentence, the requirements of this section take precedence over any inconsistent provisions of this article and article 2.1 of this chapter. The rules of this section shall not restrict any form, calculation, adjustment or payment of benefit provided under this article in effect on April 17, 2002, if the form, calculation, adjustment or payment of benefit satisfied section 401(a)(9) of the internal revenue code based on a reasonable and good faith interpretation of that section.

2. All distributions required under this section shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

3. Notwithstanding this section, other than paragraph 2 of this subsection, distributions may be made under a designation made before January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal responsibility act of 1982 (P.L. 97-248) and the provisions of this article that relate to that section.

B. The member's entire interest shall be distributed, or begin to be distributed, to the member not later than the member's required beginning date.

C. If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, not later than as follows:

1. If the member's surviving spouse is the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained seventy-two years of age, if later.

2. If the member's surviving spouse is not the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. For purposes of this subsection and subsection G of this section, distributions are considered to begin on the member's required beginning date or the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection, the date distributions are considered to begin is the date distributions actually commence.

4. If the member dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date prescribed in paragraph 1 or 2 of this subsection as long as the member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the member's death. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the member or the surviving spouse begin, this paragraph applies as if the surviving spouse were the member.

D. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made pursuant to subsections E, F and G of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions shall be made pursuant to the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the internal revenue code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury that apply to individual accounts.

E. The following provisions govern the determination of the amount to be distributed each calendar year:

1. If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year.

(b) The distribution period shall be over a life or lives or over a period certain not longer than the period described in subsection F or G of this section.

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum allowed.

(d) Payments shall either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics.

(ii) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit on death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection F of this section dies or is no longer the member's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the internal revenue code.

(iii) To provide cash refunds of employee contributions on the member's death.

(iv) To pay increased benefits that result from a plan amendment.

2. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection C, paragraph 1 or 2 of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bimonthly, monthly, semiannually or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

3. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

F. The following provisions govern annuity distributions that commence during a member's lifetime:

1. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in question and answer number 2 of section 1.401(a)(9)-6 of the regulations issued by the United States secretary of the treasury. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence applies to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches seventy years of age, the applicable distribution period for the member is the distribution period for seventy years of age under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury plus the excess of seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

G. The following provisions govern minimum distributions if a member dies before the date distributions begin:

1. Except as provided in subsection C, paragraph 4 of this section, if the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning not later than the time prescribed in subsection C, paragraph 1 or 2 of this section, over the life of the designated beneficiary or over a period certain not exceeding either of the following:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies before distributions to the surviving spouse begin, this subsection applies as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection C, paragraph 1 of this section.

H. If a member dies after the member's required beginning date and the member had not commenced distribution of retirement benefits, ASRS shall treat the member as having commenced distribution of retirement benefits on the member's required beginning date. Notwithstanding section 38-776, ASRS shall determine the member's retirement benefit as a straight annuity as of the date of the member's required beginning date. The member's estate is entitled to the member's benefit payments and any remaining member contributions on account shall be disbursed pursuant to section 38-763.

I. For the purposes of this section:

1. "Designated beneficiary" means the individual who is designated as the member's beneficiary to receive benefits under this article and is the designated beneficiary under section 401(a)(9) of the internal revenue code and question and answer number 1 of section 1.401(a)(9)-4 of the regulations issued by the United States secretary of the treasury.

2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection C of this section.

3. "Life expectancy" means life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury.

4. "Required beginning date" means the date payment of a member's benefits shall commence in accordance with section 401(a)(9)(C) of the internal revenue code.

### 38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, an existing contract or a court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

38-781. Supplemental employee deferral plan; public employees; administration; immunity; definitions

A. One or more supplemental employee deferral plans may be established pursuant to this section to provide public employees an opportunity to save additional tax-deferred monies for retirement.

B. ASRS may establish, administer, manage and operate supplemental employee deferral plans for employers.

C. ASRS may:

1. Employ services it deems necessary, including legal services, for the operation and administration of the plans.

2. Administer the plans through contracts with multiple vendors.

3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plans.

4. For the purposes of this section, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

D. A supplemental employee deferral plan does not replace an employee's existing state defined benefit retirement plan.

E. If an employer, including this state, elects to participate in a supplemental employee deferral plan, any employee of the employer who meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan may participate in the supplemental employee deferral plan.

F. Notwithstanding subsection E of this section, on or after July 1, 2022, an employee of an employer who is not eligible to participate in a public retirement system established by article 3, 3.1, 4, 4.1 or 6 of this chapter may elect to participate in a supplemental employee deferral plan if the employee meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan.

G. Employee participation in a supplemental employee deferral plan requires the participant's employer to make salary reductions from the participant's compensation at no cost to the employee, ASRS or any vendor retained by ASRS and contribute such salary reductions to the plan. An employer may make employer contributions to the supplemental employee deferral plan if the plan allows. The employer shall submit any reports required by the plan. If the participant is an active member, any compensation deferred by an employee under a plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits provided in this article earned by any employee participating in the plan.

H. Employee contributions and earnings on employee contributions are immediately vested. Employer contributions, if any, and the earnings on employer contributions shall vest according to the schedule established by the employer, if the employer completes and submits a schedule to ASRS. If the employer does not complete and submit a schedule to ASRS, employer contributions, if any, and the earnings on employer contributions shall vest according to the default schedule established by ASRS.

I. Notwithstanding any other law, this state and its officers and employees, the board and ASRS are immune from civil liability and are not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury arising out of the supplemental employee deferral plan.

J. A political subdivision or a political subdivision entity that is not participating in ASRS may elect to allow its employees to participate in a supplemental employee deferral plan that is overseen by ASRS pursuant to this section by entering into an agreement with ASRS. A political subdivision or political subdivision entity that elects to allow its employees to participate in a supplemental employee deferral plan pursuant to this subsection:

1. Is not an employer for the purposes of this article and its employees are not members for the purposes of this article.

2. May not provide any information indicating or implying that the political subdivision or political subdivision entity offers any ASRS benefits other than participation in a supplemental employee deferral plan pursuant to this subsection. A political subdivision or political subdivision entity that violates this paragraph may not elect to allow new employees to participate in a supplemental employee deferral plan pursuant to this subsection until the violation is corrected at the discretion of ASRS.

3. May elect to join ASRS pursuant to section 38-729.

K. For the purposes of this section:

1. "State" means this state, including any department, office, board, commission, agency or university, but does not mean any school district or community college district.

2. "Supplemental employee deferral plan" means a tax deferred annuity described in section 403(b) of the internal revenue code, including a custodial account described in 403(b)(7) of the internal revenue code, and an eligible deferred compensation plan described in section 457(b) of the internal revenue code. A supplemental employee deferral plan shall comply with all applicable provisions of the section of the internal revenue code under which such plan is adopted and maintained.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not

use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to

subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement

system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their

provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

[38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions](#)

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if

the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

- (a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

- (b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement

increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 38-791. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 8-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

### 38-793. Violation: classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

### 38-794. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

### 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member

develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

#### 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

#### 38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

#### 38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

#### 38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

#### 38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

#### 38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines

pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it

includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

#### 38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### 38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

#### 38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

#### 38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

#### 38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing or has contributed.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

### **38-922. Transfer or redemption of service credits**

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

[38-923. Transfer of service credits between municipal retirement systems and special retirement plans: definitions](#)

A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system

or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

C. An active or inactive member of a retirement system or plan of a municipality of this state or of the elected officials' retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

D. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.

2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the retirement system or plan.

(c) Is not currently making contributions to the retirement system or plan.

(d) Has not withdrawn contributions from the retirement system or plan.

3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

#### 38-924. Transfer of service credits

A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:

1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.

2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.

C. If a member decides to transfer:

1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.

D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

**ARIZONA STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-1001, R2-8-1003, R2-8-1004



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 13, 2024

**SUBJECT: STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-1001, R2-8-1003, R2-8-1004

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System Board (ASRS) seeks to amend two (2) rules in Title 2, Chapter 8, Article 10 related to Membership. Specifically, the ASRS seeks to amend its rules to clarify how an employer may join the ASRS to remove outdated references regarding 218 Agreements.

The ASRS indicates, in order to join the ASRS, an employer must provide Social Security 218 Agreements. However, the ASRS indicates 218 Agreements are currently managed by the Arizona Department of Administration, not the ASRS. The ASRS indicates clarifying how an employer may be eligible to join the ASRS and how an employer must provide 218 Agreement information will ensure that requests to join the ASRS are processed more efficiently. The ASRS indicates these rules will increase the clarity and effectiveness of the applicable 218 Agreement requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS processes requests to join the ASRS.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The ASRS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The ASRS states that to join the ASRS, an employer must provide Social Security 218 agreements. ASRS states that the rulemaking will clarify how an employer may join the ASRS, thereby increasing understandability of what information is necessary to join the ASRS, thereby increasing the efficiency of the administration. Clarifying how an employer may be eligible to join the ASRS and how an employer must provide 218 Agreement information will ensure that requests to join the ASRS are processed efficiently. The ASRS believes the rule will have minimal economic impact, if any, because it merely updates outdated references regarding 218 Agreements. Stakeholders include the ASRS and all potential employers of the ASRS. The ASRS indicates it currently has a total membership of approximately 652,864 and 664 employers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how an employer may join the ASRS.

6. **What are the economic impacts on stakeholders?**

The ASRS states that the rulemaking does not directly affect state agencies and does not provide any benefits or impose any costs on political subdivisions. They state no businesses, of any size, are directly affected by the rulemaking. The ASRS believes there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The ASRS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The ASRS indicates it received no public comments related to this rulemaking and no one attended the oral proceeding held on September 5, 2023.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The ASRS indicates the proposed amended rules do not require issuance of a permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The ASRS indicates there is no federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the ASRS seeks to amend two (2) rules in Title 2, Chapter 8, Article 10 related to Membership. Specifically, the ASRS seeks to amend its rules to clarify how an employer may join the ASRS to remove outdated references regarding 218 Agreements.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 8, 2024

Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System Board**

Dear Ms. Sornsin:

The attached final rule package regarding membership is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 18, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Chief Strategy Officer;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Katie Daigneault  
Chief Strategy Officer

**NOTICE OF FINAL RULEMAKING**  
**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**PREAMBLE**

- 1. Article, Part or Section Affected (as applicable)                      Rulemaking Action**

R2-8-1001	Amend
R2-8-1003	Amend
R2-8-1004	Amend
  
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute:    A.R.S. § 38-714(E)(4)  
Implementing statutes: A.R.S. §§ 38-711 et seq.
  
- 3. The effective date for the rules:**
  - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

None
  
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 29 A.A.R. 1789, August 18, 2023  
Notice of Proposed Rulemaking: 29 A.A.R. 1778, August 18, 2023
  
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:                                Jessica A.R. Thomas, Rules Writer  
Address:                             Arizona State Retirement System  
   3300 N. Central Ave., Ste. 1400  
   Phoenix, AZ 85012-0250  
Telephone:                         (602) 240-2039  
E-Mail:                                [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)
  
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The ASRS needs to amend its rules relating to how an employer may join the ASRS to remove outdated references regarding 218 Agreements.
  
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No study was reviewed.

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

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely updates outdated references regarding 218 Agreements.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on September 5, 2023.

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

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 10. MEMBERSHIP**

Section

- R2-8-1001. Definitions
- R2-8-1003. Charter School Employer Membership
- R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership

**ARTICLE 10. MEMBERSHIP**

**R2-8-1001. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. “218 Agreement” means the same as in R2-8-701.
2. “218 Resolution” means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. “Acceptable Documentation” means the same as in R2-8-115.
4. “Designated Employer Administrator” means an individual designated by the Employer and who has authorized access to the Employer’s secure ASRS account in order to fulfill the Employer’s responsibilities.
5. “Engaged To Work” means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. “Leasing An Employee From A Third Party” means the same as “Leased from a third party” in R2-8-116.
7. “State Social Security Administrator” means the ~~ASRS~~ Arizona Department of Administration staff designated ~~by the Board~~ to approve 218 Agreements and 218 Resolutions.
8. “Week” means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:

1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B.** In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C.** Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D.** In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS ~~the following original documents~~ by the due date listed on the Potential New Employer Letter:
1. The following original documents:
    - ~~1-a.~~ The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
    - ~~2-b.~~ Two ASRS Agreements showing:
      - ~~a-i.~~ The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
      - ~~b-ii.~~ What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
      - ~~e-iii.~~ The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
      - ~~d-iv.~~ The name, title, email address, and telephone number of the designated authorized agent for the charter school;

- ~~e.v.~~ The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
- ~~f.vi.~~ The ASRS Agreement is binding and irrevocable;
- ~~g.vii.~~ The effective date of the ASRS Agreement;
- ~~h.viii.~~ The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
- ~~i.ix.~~ The dated signature of the designated authorized agent for the charter school.

~~3.c.~~ Two ASRS Resolutions showing:

- ~~a.i.~~ The legal name of the charter school as sponsored pursuant to subsection (A);
- ~~b.ii.~~ The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
- ~~e.iii.~~ The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
- ~~d.iv.~~ The designated authorized agent for the charter school;
- ~~e.v.~~ The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
- ~~f.vi.~~ The dated and notarized signature of the designated authorized agent.

2. The following copies if the eligible charter school has elected coverage pursuant to a 218 Agreement:

- ~~4.a.~~ ~~Two A 218 Agreements Agreement either electing or declining coverage.~~ If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
- ~~5.b.~~ ~~Two A 218 Resolutions, if the charter school is electing coverage pursuant to subsection~~ ~~(D)(4)Resolution.~~ The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, ~~the state Social Security administrator shall sign the 218 Agreements and the ASRS~~

Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.

**F.** Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**G.** Upon joining the ASRS, a charter school has a one-time opportunity to identify and exclude current employees from ASRS membership based on a classification of those employees that is established by the charter school consistent with federal law and that is not designed to, and does not result in, the cost of providing the benefits to the charter school's employees being greater than the cost of providing benefits to the employees of Employers as determined by the ASRS.

**H.** A charter school that elects to identify and exclude a classification of employees according to subsection (G) shall provide the ASRS with all information the ASRS requests in order for the ASRS to determine the cost of providing the benefits to the charter school's employees is not greater than the cost of providing benefits to the employees of Employers as determined by the ASRS.

**I.** Notwithstanding subsection (G), all other current and future employees of the charter school who meet membership eligibility requirements are required to participate in the ASRS as of the effective date of the charter school joining the ASRS according to A.R.S. §§ 38-711 et seq.

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

**A.** A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:

1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.

**B.** Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political

subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS ~~the following original documents~~ by the due date listed on the Potential New Employer Letter:

1. The following original documents:

~~1-a.~~ The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.

~~2-b.~~ Two ASRS Agreements showing:

~~a-i.~~ The legal name and current mailing address of the political subdivision or political subdivision entity;

~~b-ii.~~ What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;

~~e-iii.~~ The approximate number of employees that will become members upon the effective date of the ASRS Agreement;

~~d-iv.~~ The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;

~~e-v.~~ The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and

~~f-vi.~~ The ASRS Agreement is binding and irrevocable;

~~g-vii.~~ The effective date of the ASRS Agreement;

~~h-viii.~~ The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and

~~i-ix.~~ The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.

~~3-c.~~ Two ASRS Resolutions showing:

~~a-i.~~ The legal name of the political subdivision or political subdivision entity;

- ~~b-ii.~~ The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
- ~~e-iii.~~ The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
- ~~d-iv.~~ The designated authorized agent for the political subdivision or political subdivision entity;
- ~~e-v.~~ The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
- ~~f-vi.~~ The dated and notarized signature of the designated authorized agent.

2. The following copies if the eligible political subdivision or political subdivision entity has elected coverage pursuant to a 218 Agreement:

- ~~4.a.~~ Two ~~218 Agreements either electing or declining coverage~~ Agreement. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
- ~~5.b.~~ Two ~~218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4)~~ Resolution. The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

**D.** Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, ~~the state Social Security administrator shall sign the 218 Agreements and~~ the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

**E.** Upon joining the ASRS, a political subdivision or political subdivision entity has a one-time opportunity to identify and exclude current employees from ASRS membership based on a classification of those employees that is established by the political subdivision or political subdivision entity consistent with federal law and that is not designed to, and does not result in, the cost of providing the benefits to the political subdivision's or political subdivision entity's employees

being greater than the cost of providing benefits to the employees of Employers as determined by the ASRS.

**F.** A political subdivision or political subdivision entity that elects to identify and exclude a classification of employees according to subsection (E) shall provide the ASRS with all information the ASRS requests in order for the ASRS to determine the cost of providing the benefits to the political subdivision's or political subdivision entity's employees is not greater than the cost of providing benefits to the employees of Employers as determined by the ASRS.

**G.** Notwithstanding subsection (E), all other current and future employees of the political subdivision or political subdivision entity who meet membership eligibility requirements are required to participate in the ASRS as of the effective date of the political subdivision or political subdivision entity joining the ASRS according to A.R.S. §§ 38-711 *et seq.*

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to how an employer may join the ASRS to remove outdated references regarding 218 Agreements.

a. The conduct and its frequency of occurrence that the rule is designed to change:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. In order to join the ASRS, an employer must provide Social Security 218 Agreements. However, 218 Agreements are currently managed by Arizona Department of Administration, not the ASRS.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Without this rulemaking, employers will not have an adequate understanding of what information is managed by ASRS and necessary to join the ASRS. Notice of such information is necessary in order to ensure that employers have adequate notice of how to join the ASRS. By promulgating these rules, employers will have a better understanding of when they are eligible to join the ASRS and what information an employer must provide to the ASRS. Increasing understanding of such requirements will increase the employer's understanding of how to join the ASRS and reduce confusion, which will reduce burden on the public.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how an employer may join the ASRS, thereby increasing understandability of what information is necessary to join the ASRS, thereby increasing the efficiency of the administration. Clarifying how an employer may be eligible to join the ASRS and how an employer must provide 218 Agreement information will ensure that requests to join the ASRS are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the applicable 218 Agreement requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS processes requests to join the ASRS.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely updates outdated references regarding 218 Agreements.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400

Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All potential employers of the ASRS, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 652,864 and 664 employers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

- a. Identification of the small business subject to the rulemaking:  
No businesses, regardless of size, are subject to the rulemaking.
  - b. Administrative and other costs required for compliance with the rulemaking:  
Not applicable.
  - c. Description of methods that may be used to reduce the impact on small businesses:  
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
All potential ASRS employers are directly affected by the rulemaking. The effect has been previously described above.
  9. Probable effects on state revenues:  
There will be no effect on state revenues.
  10. Less intrusive or less costly alternative methods considered:  
The ASRS believes this is the least costly and least intrusive method because it will clarify how an employer may join the ASRS.

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
April 1, 2023 through June 30, 2023

*Section R2-8-301 numbering corrected and subsection reference under the “Estimated Social Security disability income amount” definition corrected. No other changes have been made to this Chapter since Supp. 22-3 (Supp. 23-2).*

**Questions about these rules? Contact:**

Board: Arizona State Retirement System  
Address: 3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Website: <https://www.azasrs.gov>  
Name: Jessica A.R. Thomas, Rules Writer  
Telephone: (602) 240-2039  
Email: [Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**PREFACE**

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

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The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

**RULE HISTORY**

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

**AUTHENTICATION OF PDF CODE CHAPTERS**

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

**HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

**ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

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An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

**PERSONAL USE/COMMERCIAL USE**

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*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-711 et seq.

**Supp. 23-2**

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. RETIREMENT SYSTEM**

Section		
R2-8-101.	Repealed .....	4
R2-8-102.	Repealed .....	4
R2-8-103.	Repealed .....	4
R2-8-104.	Definitions .....	4
R2-8-105.	Repealed .....	5
R2-8-106.	Reserved .....	5
R2-8-107.	Reserved .....	5
R2-8-108.	Reserved .....	5
R2-8-109.	Reserved .....	5
R2-8-110.	Reserved .....	5
R2-8-111.	Reserved .....	5
R2-8-112.	Reserved .....	5
R2-8-113.	Emergency Expired 5	
R2-8-114.	Emergency Expired .....	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement .....	7
R2-8-118.	Application of Interest Rates .....	8
R2-8-119.	Expired .....	8
R2-8-120.	Repealed .....	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions .....	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	9
Table 1.	Expired .....	9
Table 2.	Expired .....	9
Table 3.	Repealed .....	9
Table 3A.	Expired 10	
Table 3B.	Expired .....	10
Table 4.	Expired 10	

Table 4A.	Repealed .....	10	
Table 4B.	Repealed .....	10	
Table 4C.	Repealed .....	10	
Table 5.	Expired		
	10		
Table 6.	Expired		
	10		
Table 7.	Expired		
	11		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		11
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application		
	12		
R2-8-127.	Re-Retirement Application		
	15		
R2-8-128.	Joint and Survivor Retirement Benefit Options		
	16		
R2-8-129.	Period Certain and Life Annuity Retirement Options		
	.....	16	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant		
	.....	16	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation		
	.....	18	
R2-8-132.	Survivor Benefit Options		
	19		
R2-8-133.	Survivor Benefit Applications .....	20	
Table 1.	Repealed .....	22	
Table 2.	Repealed .....	22	
Table 3.	Repealed .....	22	
Table 4.	Repealed .....	22	
Table 5.	Repealed .....	22	
Table 6.	Repealed .....	23	
Table 7.	Repealed .....	23	
Table 8.	Repealed .....	23	
Table 9.	Repealed .....	23	
Table 10.	Repealed .....	23	
Table 11.	Repealed .....	23	
Exhibit A.	Repealed .....	23	
Exhibit C.	Repealed .....	23	
Exhibit G.	Repealed .....	25	
Exhibit H.	Repealed .....	25	
Exhibit I.	Repealed .....	26	
Exhibit J.	Repealed .....	26	
Exhibit K.	Repealed .....	26	

**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT**

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)*

*(Supp. 17-2).*

*Article 2,*

*consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section			
R2-8-201.	Definitions .....	27	
R2-8-202.	Premium Benefit Eligibility and Benefit Determination		28
R2-8-203.	Payment of Premium Benefit .....	28	
R2-8-204.	Premium Benefit Calculation .....	29	
R2-8-205.	Premium Benefit Documentation .....	29	
R2-8-206.	Six-Month Reimbursement Program .....	29	
R2-8-207.	Optional Premium Benefit .....	30	

**ARTICLE 3. LONG-TERM DISABILITY**

*Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).*

Section			
R2-8-301.	Definitions .....	31	
R2-8-302.	Application for Long-Term Disability Benefit .	31	
R2-8-303.	Long-Term Disability Calculation .....	31	
R2-8-304.	Payment of Long-Term Disability Benefit ...	32	
R2-8-305.	Social Security Disability Appeal .....	32	
R2-8-306.	Approval of Social Security Disability .....	32	

**ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	
	32	
R2-8-402.	General Procedures	
	32	
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	32
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	
	33	
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	33

**ARTICLE 5. PURCHASING SERVICE CREDIT**

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	
	34	
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	35
R2-8-503.	Requirements Applicable to All Service Credit Purchases	36
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	
	36	
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	36
R2-8-506.	Cost Calculation for Purchasing Service Credit	36
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	36
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	
	37	
R2-8-509.	Required Documentation and Calculations for Military Service Credit	
	37	
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	
	38	
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	
	39	
R2-8-512.	Purchasing Service Credit by Check, Cashier's Check, or Money Order	
	39	
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	
	39	
R2-8-513.01.	Irrevocable PDA and Transfer of Employment to a Different Employer	
	41	
R2-8-513.02.	Termination Date	
	41	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	41	
R2-8-515.	Repealed	42
R2-8-516.	Expired	42
R2-8-517.	Expired	42
R2-8-518.	Repealed	42
R2-8-519.	Purchasing Service Credit by Termination Pay	
	43	
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	43	
R2-8-521.	Adjustment of Errors	
	44	

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	44	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	44	
R2-8-603.	Petition for Rulemaking	
	44	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	44	
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	44	
R2-8-606.	Oral Proceedings	
	45	
R2-8-607.	Petition for Delayed Effective Date	
	45	

## ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section		
R2-8-701.	Definitions	
	45	
R2-8-702.	General Information	
	45	
R2-8-703.	Employer's Discovery of Error	
	46	
R2-8-704.	Member's Discovery of Error	
	46	
R2-8-705.	ASRS' Discovery of Error	
	46	
R2-8-706.	Determination of Contributions Not Withheld	
	46	
R2-8-707.	Submission of Payment	
	47	
R2-8-708.	Expired .....	47
R2-8-709.	Repealed .....	47

## ARTICLE 8. RECOVERY OF OVERPAYMENTS

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section		
R2-8-801.	Definitions .....	47
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	47
R2-8-803.	Reimbursement of Overpayments	
	48	
R2-8-804.	Collection of Overpayments from Forfeiture	
	48	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	48
R2-8-806.	Collection of Overpayments from Survivor Benefit	
	.....	49
R2-8-807.	Collection of Overpayments from LTD Benefit	
	49	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	49
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	49
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	49

## ARTICLE 9. COMPENSATION

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section		
R2-8-901.	Definitions .....	49
R2-8-902.	Remitting Contributions .....	49
R2-8-903.	Accrual of Credited Service .....	50
R2-8-904.	Compensation from An Additional Employer .	50
R2-8-905.	Expired .....	50

## ARTICLE 10. MEMBERSHIP

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section		
R2-8-1001.	Definitions	
	50	
R2-8-1002.	Employee Membership	
	50	
R2-8-1003.	Charter School Employer Membership .....	51
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	.....	52
R2-8-1005.	Employer Reporting	

R2-8-1006.	53	Prior Service Purchase Cost for New Employers
53		

**ARTICLE 11. TRANSFER OF SERVICE CREDIT**

Section		
R2-8-1101.	Definitions	
	54	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	54
R2-8-1103.	Transferring Service to Other Retirement Plans	
	.....	55

## ARTICLE 1. RETIREMENT SYSTEM

### R2-8-101. Repealed

#### Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-102. Repealed

#### Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-103. Repealed

#### Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
  - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
  - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
  - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
  - a. The requirements of A.R.S. § 38-773(C);
  - b. The date of the member and alternate payee's marriage;
  - c. The date of divorce or the date in which the community property interest ended;
  - d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
  - e. How the member's ASRS benefits should be split in specific amounts for the following possible events:
    - i. The member's retirement;
    - ii. Return of contributions and termination of membership according to R2-8-115; and
    - iii. The death of the member prior to retirement;
  - f. Whether the member may transfer all ASRS service credit to another retirement system;
  - g. Whether the member is required to maintain the alternate payee as the member's beneficiary;
  - h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
  - i. The judge's dated signature.
10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended

by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;
  - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
  - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
  - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
  - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
  - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

- j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
  - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
  - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
  - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
- a. The type of eligible retirement plan; and
  - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  - 6. The Employer's name and telephone number;
  - 7. The Employer Number;
  - 8. The name and title of the authorized Employer representative;
  - 9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

#### **Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-116. Alternate Contribution Rate**

- A. For purposes of this Section, the following definitions apply:
- 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  - 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  - 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  - 4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest	Assumed Actuarial Investment	Interest Rate Used to Determine Return of Contributions Upon
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Rate Change	Earnings Rate	Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

#### **Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

#### **R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  - 1. The interest and investment return rate assumptions are determined by the Board.
  - 2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

#### **Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

#### **Table 1. Expired**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### **Table 2. Expired**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### **Table 3. Repealed**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614,

effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former

Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3).

Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and

- b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
- 3. "Compensation" means the same as in A.R.S. § 38-711(7).
- 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
- 5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
  - a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
- 6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
- 7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
- 8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
  - 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  - 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

#### **Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

#### **R2-8-126. Retirement Application**

- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
  - 1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  - 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  - 3. "Applicable retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or
    - b. The date a member re-retires from the ASRS after returning to active membership.
  - 4. "Conservator" means the same as in A.R.S. § 14-7651.
  - 5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  - 6. "Legal documentation" means:
    - a. One document issued from a United States government entity; or
    - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
  - 7. "LTD" means the same as in R2-8-301.
  - 8. "Irrevocable PDA" means the same as in R2-8-501.
  - 9. "On File" means the same as in R2-8-115.
  - 10. "Original retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. The member's current mailing address; if not On File with ASRS;
  5. The member's date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary's full name;
    - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary's date of birth;
    - d. The beneficiary's relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
    - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member's spouse's full name; and
    - d. The member's spouse's notarized signature;
  12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  1. The type of account and account number to which the member is electing to roll over;
  2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
  - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  - 2. The member's total salary paid during their last fiscal year;
  - 3. The member's compensation for the last pay period;
  - 4. The name and title of the authorized Employer representative;
  - 5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  - 1. The member's full name;
  - 2. The member's bank account routing number;
  - 3. The member's bank account number; and
  - 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

#### **Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D)

effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-127. Re-Retirement Application**

- A. The definitions in R2-8-126 apply to this Section.
- B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
  1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re- retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

#### **R2-8-128. Joint and Survivor Retirement Benefit Options**

- A. The definitions in R2-8-126 apply to this Section.
- B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-129. Period Certain and Life Annuity Retirement Options**

- A. The definitions in R2-8-126 apply to this Section.

- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
  - a. Full name;
  - b. Social Security number, if the contingent annuitant is a U.S. citizen;
  - c. Date of birth; and
  - d. Legal relationship to the member.
- 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
  - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
- 8. Whether the spouse's consent is not required because:
  - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.
- Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

- A. The definitions in R2-8-126 apply to this Section.
- B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
  - 1. The Member's full name and one or more of the following information:
    - a. The Member's Social Security number or U.S. Tax Identification number; or
    - b. The Member's address; or
    - c. The Member's date of birth;
  - 2. The following information for the beneficiary:
    - a. The full name of the person or entity the member is designating as beneficiary;
    - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
    - c. The percentage of the benefit the member is allocating to the beneficiary; and
  - 3. The member's notarized signature.
- C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E. Effective July 1, 2013, a married member:
  - 1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary;
  - 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate contingent annuitant; or
    - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
  - 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
  - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
  2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** A DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:
          - (a) They are exempt from backup withholding, or
          - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
          - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
        - (3) They are a legal resident of the United States, unless they are an estate or trust.
      - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
      - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan

- will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or
      - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
    - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
    - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
    - f. If there are other surviving heirs, then the name and relationship of each surviving heir;

- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496,









#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

#### Exhibit M, Table 6. Repealed

#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

### ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

#### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 04-3).

07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  - 1. The actual cost of the Coverage premium; or
  - 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

- a. First and last name;
  - b. Social Security number or U.S. Tax Identification number;
  - c. Date of birth; and
  - d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
  - a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
  - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

### **ARTICLE 3. LONG-TERM DISABILITY**

#### **R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
3. "Estimated Social Security disability income amount" means the same as in R2-8-801(1).
4. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
5. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
6. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
7. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Numbering corrected and subsection reference under the "Estimated Social Security disability income amount" definition corrected (Supp. 23-2).

#### **R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

#### Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

#### R2-8-303. Long-Term Disability Calculation

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

#### Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

#### R2-8-304. Payment of Long-Term Disability Benefit

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.
- D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

#### Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### R2-8-305. Social Security Disability Appeal

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

#### Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

#### R2-8-306. Approval of Social Security Disability

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

#### Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

### ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

#### R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E) (1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-402. General Procedures**

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

#### **R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
  - 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  - 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
  - 1. The decision the agency is making in response to the letter of appeal; and
  - 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
  - 1. The agency action the ASRS is taking in response to the letter of appeal; and
  - 2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
  - 1. The name and mailing address of the member, employer, or other person filing the Request;
  - 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  - 3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
  - 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  - 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I. The Board has delegated to each Health Plan Vendor the authority to:
  - 1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  - 2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  - 3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  - 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

### **ARTICLE 5. PURCHASING SERVICE CREDIT**

#### **R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;

- b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
- a. After accepting an offer to work for a new Employer;
  - b. While working as an active member for a different Employer; or
  - c. Before returning to work with any Employer within 120 days of terminating employment.
26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A.** An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
- 1. Name;
  - 2. Mailing address;
  - 3. Date of birth;
  - 4. Marital status;
  - 5. Gender;
  - 6. Primary email address;
  - 7. Primary phone number; and
  - 8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B.** An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
- 1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  - 2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C.** Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
- 1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  - 2. Instructions for electing method of payment; and
  - 3. The date payment election is due.
- D.** An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E.** An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
- 1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  - 2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  - 3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
  - 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  - 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
  - 1. Leave of Absence Service;
  - 2. Military Service;
  - 3. Forfeited Service; and
  - 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
  - 1. The amount the Eligible Member wants to apply, and
  - 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
  - 1. Leave of Absence Service;
  - 2. Military Service; and
  - 3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

- A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
  - 1. One year of credited service in any plan year, or
  - 2. One month of credited service in any one calendar month.
- B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.
- C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
  - 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  - 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
  - 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and

2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
  1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
  1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
  1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
  - 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
  - 1. The name and mailing address of the Other Public Service employer;
  - 2. The position the Eligible Member held while working for the Other Public Service employer;
  - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or

- c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
  - C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
  - 1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
  - 2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
    - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
    - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
    - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
      - i. Terminating employment;
      - ii. Terminating LTD without returning to work with an Employer; or
      - iii. The effective ASRS retirement date;
    - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
    - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
    - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
    - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
  - 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;

- c. Understands that the election to use Termination Pay is binding and irrevocable;
  - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
  - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
  - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
  - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  2. Limit the payroll deduction time period to a maximum of 520 payments; and
  3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
  2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  3. Eligible Member terminates all ASRS employment without transferring employment; or
  4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
  2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
    - c. The ASRS shall not accept the following fund types:
      - i. Roth funds;
      - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      - iii. Inherited IRA;
      - iv. Coverdale Education Savings Account funds;
      - v. Hardship distributions;
      - vi. Funds not includable in gross income;
      - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      - ix. One of a series of substantially equal periodic payments made for 10 years or more;
      - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
    - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
    - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
    - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
    - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
  - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
    1. The Eligible Member's full name;
    2. The last 4 digits of the Eligible Member's Social Security number;
    3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
    4. The Authorized Representative's name and title;
    5. The Authorized Representative's telephone number; and
    6. Certification by the Authorized Representative's dated signature that:
      - a. The plan is either:
        - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
        - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
        - iii. An annuity contract described in IRC § 403(b); or
        - iv. An IRA described in A.R.S. § 38-747(H)(3);
      - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
      - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and

- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
  - 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  - 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  - 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
  - 1. The name and current address of the person submitting the petition,
  - 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  - 3. The signature of the person submitting the petition, and
  - 4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
  - 1. The name and current address of the person submitting the objection;
  - 2. Identification of the rule;
  - 3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  - 4. The signature of the person submitting the objection; and
  - 5. The date the person signs the objection.
- B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
  - 1. The name and current address of the person making the request;
  - 2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  - 3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
  - 1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  - 2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  - 3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  - 4. Explain the background and general content of the proposed rulemaking;
  - 5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  - 6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
  - 1. Name and current address of the person submitting the petition;
  - 2. Identification of the proposed rule;
  - 3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  - 4. Reason why the public interest will not be harmed by the delayed effective date;
  - 5. Signature of the person submitting the petition; and

6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B.** The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C.** The ASRS shall not waive payment of contributions or interest owed under this Article.
- D.** If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
  
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A.** If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
  - c. The member's position title during the date range listed in subsection (A)(2)(b);
  - d. Whether the member was Engaged to Work for the Employer; and
  - e. Dated signature of the member certifying the member understands:
    - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
    - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, Employer and the member, an invoice with the following:
  - 1. The amount of Eligible Service for which contributions were not withheld,
  - 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  - 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  - 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  - 5. The dollar amount of contributions to be paid to the ASRS by the member.
- F.** The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022),

with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-708. Expired**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

**R2-8-801. Definitions**

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A.** Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B.** A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C.** An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- D.** If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- E.** A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- F.** If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  - 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  - 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  - 1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  - 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  - 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  - 1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  - 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION**

**R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
  - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired**

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

## ARTICLE 10. MEMBERSHIP

### R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

#### Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

### R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.

- J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

- A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the

political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

- C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1005. Employer Reporting**

- A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;

7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
  1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1006. Prior Service Purchase Cost for New Employers**

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
  1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
  1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.
- G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.
- H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

### **ARTICLE 11. TRANSFER OF SERVICE CREDIT**

#### **R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.

5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
  1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
  - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  - 2. The Member’s Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  - 1. The member’s full name;
  - 2. The last four digits of the member’s Social Security number;
  - 3. The name of the Other Retirement Plan; and
  - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  - 1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
  - 2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  - 1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  - 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.
- H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee’s notarized signature.

**Historical Note**

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

### 38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
  - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
  - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
  - (iv) Payments for allowances.
  - (v) Reimbursements for employee business expenses or employee personal expenses.
  - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
  - (vii) Payments made in lieu of any employer-paid insurance coverage.
  - (viii) Workers' compensation, unemployment compensation payments and disability payments.
  - (ix) Merit awards pursuant to section 38-613.
  - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
  - (xi) Payments made in the form of goods or services in lieu of gross wages.
  - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
  - (xiii) Payments in excess of the section 401(a)(17) of the internal revenue code limits established in section 38-746.
  - (xiv) Payments for any other employment benefit.
  - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
  - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
  - (c) Means any person receiving a benefit under ASRS.
  - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
  - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
  - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
    - (i) Is not otherwise an employee of an employer.
    - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
    - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

**38-712. ASRS purpose: trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.
2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.
3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.
4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming a person with a disability.
5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.

B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

38-713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.

2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

- 1. A portfolio manager acting in a fiduciary capacity.
- 2. A securities analyst.
- 3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
- 4. A chartered financial analyst in good standing as determined by the CFA institute.
- 5. A professor at the university level teaching economics or investment related subjects.
- 6. An economist.
- 7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

- 1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.
- 2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year not later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The

report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

K. In determining the past service funding period, the board shall seek to improve the funded status whenever the trust fund established by section 38-712 is less than one hundred percent funded.

**38-715. Director: powers and duties**

- A. The board shall appoint a director. The director shall serve at the pleasure of the board.
- B. The director shall appoint a deputy director and assistant directors with the approval of the board.
- C. The director, under the supervision of the board, shall:
  1. Administer this article.
  2. Be responsible for the recruitment, hiring and day-to-day management of employees.
  3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.
  4. Prescribe procedures to be followed by employers for remitting data and monies to ASRS and for receiving data and monies from ASRS.

5. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account, the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

4. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. For current or prospective employees of ASRS, the director, under the supervision of the board, may:

1. Conduct criminal records checks. The director may require a current or prospective employee to submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. Conduct credit checks for accounting, investment and other finance-related positions. The director shall establish a policy for conducting credit checks on a current employee that includes the method for determining when a credit check may be conducted, retaining records relating to the reason for the credit check and notifying an employee of the credit check and the result of the credit check.

F. The director and all persons employed by the director are subject to section 38-611 and title 41, chapter 4, article 4.

G. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following ASRS positions:

1. Director.
2. Deputy director.
3. Chief investment officer.
4. Fiduciary or investment counsel.

**38-716. Employers' responsibilities under the system**

In addition to any other requirements of this article or article 2.1, 7 or 8 of this chapter, an employer of a member shall:

1. Cooperate and collaborate with ASRS and follow all ASRS procedures to ensure the proper enrollment of members in the system.
2. Submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to make eligibility determinations and for the proper administration of the plan.
3. Attend the ASRS annual training conference.

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.

**38-718. Investment managers: general powers and duties: investment of monies: limitations**

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member

nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

### 38-718. Investment managers; general powers and duties; investment of monies; limitations

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

**38-719. Interest paid to members and employers**

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

**38-720. ASRS depository**

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

**38-721. Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.

3. Actuarial consulting fees.

4. Retiree payroll.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection E, paragraph 1 and subsection I, paragraphs 2 and 3, section 38-718, subsection D, paragraph 5 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

**38-722. Abandoned monies: disposition**

A. Except as otherwise provided in this section, the trust fund established by section 38-712 is exempt from title 44, chapter 3.

B. Monies in the ASRS trust fund and the LTD trust fund established by section 38-797.02 are presumed abandoned if the apparent owner, as defined in section 44-301, has not communicated in writing with ASRS and has not otherwise indicated an interest in the monies for the three year period following the required beginning date of distributions pursuant to section 38-775.

C. At the time monies are presumed abandoned pursuant to subsection B of this section, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.

D. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.

E. Before monies are presumed abandoned, ASRS shall attempt to contact the apparent owner in writing. If the apparent owner is a member, beginning five years before the apparent owner's required beginning date of distributions pursuant to section 38-775 and for three years after that date, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a retirement benefit. If the apparent owner is a beneficiary, beginning in the calendar year containing the fifth anniversary of the member's death and for three years, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a survivor benefit. If this notice is returned by the postal authority as undeliverable, ASRS shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with ASRS, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails and the base amount of the unclaimed monies is three hundred dollars or more, ASRS may use the services of a people search service. A fee imposed by the people search service shall not be deducted from the member's benefit and these expenditures are continuously appropriated and shall be paid from the administration account established pursuant to section 38-721 in the amount deemed necessary by the board.

F. If at any time an owner, as defined in section 44-301, establishes an entitlement in the monies, ASRS shall withdraw the monies from either the ASRS trust fund or the LTD trust fund, whichever is applicable, and pay the owner the monies or benefit to which the owner is entitled pursuant to this article or article 2.1 of this chapter, including interest at a rate determined by ASRS, if applicable.

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-724. Surrender of property subject to levy; authority to release levy and return property; definitions

A. Any person in possession of, or obligated with respect to, property subject to levy on which a levy has been made, on request of ASRS, shall surrender the property or discharge the obligation to

ASRS, except the part of the property that is, at the time of the request, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property subject to levy, on request by ASRS, is liable in person and estate to this state in a sum equal to the value of the property not so surrendered, but not exceeding the amount of debt for the collection of which the levy has been made, with costs and interest on the sum at the interest rate determined by the board from the date of the levy or, in the case of a levy described in section 38-723, subsection E, from the date the person would otherwise have been obligated to pay the amounts to the debtor. Any amount, other than costs, recovered under this subsection shall be credited against the debt for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property subject to levy on which a levy has been made who, on request by ASRS, surrenders the property or discharges the obligation to ASRS is discharged from any obligation or liability to the debtor with respect to the property arising from the surrender or payment.

D. ASRS may release a levy on all or part of property levied on. The release shall not operate to prevent any subsequent levy.

E. If ASRS determines that property has been wrongfully levied on, ASRS shall return the specific property levied on or an amount of money equal to the value of the property levied on.

F. For the purposes of this section:

1. "Levy" includes the power of distraint and seizure by any means.

2. "Person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, or any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property or to discharge the obligation.

#### 38-725. Financial institutions data match; prohibited disclosure; fee; definition

A. ASRS may enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist ASRS in the collection of monies owed. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. The data exchanges shall include the name, address of record, social security number and any other identifying information for each person who maintains an account at the institution and who owes money as identified by ASRS by name and social security number.

C. ASRS or its agent may disclose a debtor's financial record under this section only in order to enforce the collection of the money the debtor owes to ASRS.

D. ASRS may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

E. For the purposes of this section "financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

**38-727. Eligibility; options**

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this subsection.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. A person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days after employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

9. The following are ineligible for membership in ASRS:

(a) A person who performs services in a hospital, home or other institution as an inmate or patient at the hospital, home or other institution.

(b) A person who performs agricultural labor services, as defined in section 210 of the social security act.

(c) A person who is a nonresident alien temporarily residing in the United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are performed.

(d) A person who performs services for a school, college or university in this state at which the person is enrolled as a student, as defined by the employing institution. The employing institution

shall maintain an appeal process for a person who disagrees with the employing institution's determination that the person is a student and not eligible for membership in ASRS.

(e) A person who performs services under a program designed to relieve the person from unemployment.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. An elected official, as defined in section 38-831, who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability, if the elected official's employer is a participating employer under this article and the elected official is eligible for ASRS service credit for the elected official's service.

#### 38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amount equal to the present value required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan using the actuarial assumptions that are approved by the board. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

J. Notwithstanding any other law, an employee of a political subdivision who was previously a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that public employee retirement system for any period of employment is ineligible to receive service credit from ASRS for the same period of employment.

### 38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The transfer shall be made pursuant to section 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

### **38-735. Payment of contributions: recovery of delinquent payments**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions; prepayment; definitions

A. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.

Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1. 401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38-712 or a section 115 trust.

2. ASRS shall determine the following options available to the employer:

(a) The amortization time periods.

(b) The frequency and dates that prepayments can be made.

(c) The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d) Any other options or obligations that the employer may have when entering into this written agreement.

3. The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4. The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38-718.
  5. 401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38-735.
  6. The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.
  7. ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.
  8. Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:
    - (a) In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
    - (b) After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
  9. After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.
  10. If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.
  11. Assets transferred in or out of or held in the ASRS trust fund established by section 38-712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.
  12. The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.
  13. If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax-exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.
- E. In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:
1. Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2. Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F. For the purposes of this section:

1. "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2. "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions.

### 38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit or, if the request is made within one year after the date of overpayment, shall return the contributions to the employer. ASRS may not pay an employer earnings attributable to the excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit. On receipt of an employer credit or return of contributions pursuant to this subsection, the employer shall return any member portion of the returned contributions to the member.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by

ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

E. Notwithstanding any other law, an employer may correct a contributions error pursuant to subsection B of this section by making payment adjustments through the employer's payroll reporting for the contributions that were not submitted if both of the following apply:

1. The adjustment is made within the same fiscal year that the contributions were due to ASRS.

2. The employer obtains written consent from the employee to make the adjustment to the employee's paycheck.

F. Notwithstanding any other law, if an employer pays less than the correct amount of employer or member contributions into ASRS, the correct amount of member contributions may not be paid to ASRS after the death of the member.

### 38-739. Credited service

- A. A member shall not earn more than one year of credited service in any fiscal year.
- B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.
- C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.
- D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.
- E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.
- F. The following years of service are excluded from credited service under this article:
  - 1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.
  - 2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

#### 38-739.01. Credited service retention

Consistent with the compliance statement issued by the United States internal revenue service, an employee who is employed with an ASRS employer in a position that was exempt from ASRS membership because the position was not included in agreements providing for the employee's coverage under the federal old-age and survivors insurance system but on whose behalf the employer has remitted ASRS contributions shall retain credited service for the period of employment for which the employer remitted ASRS contributions on the employee's behalf.

### 38-740. Return of contributions

- A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
  - 1. If the member has less than five years of credited service, ASRS shall disburse all of the member's contributions.
  - 2. If a member has five or more years of credited service, ASRS shall disburse the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738,

subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five percent.
- (b) 6.0 to 6.9 years of credited service, forty percent.
- (c) 7.0 to 7.9 years of credited service, fifty-five percent.
- (d) 8.0 to 8.9 years of credited service, seventy percent.
- (e) 9.0 to 9.9 years of credited service, eighty-five percent.
- (f) 10.0 or more years of credited service, one hundred percent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If ASRS has disbursed an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If ASRS disburses more than the amount due to a member or an alternate payee pursuant to this section, the person who received the overpayment shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

#### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, ASRS shall disburse benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

#### 38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

#### 38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is

derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

**38-744. Leave of absence: credit for leave without pay**

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

**38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
3. Volunteers or is ordered into active military service of the United States as part of a military call-up.
4. One of the following occurs:
  - (a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.
  - (b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

#### 38-746. Compensation limitation: adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

#### 38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) \$40,000 or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred percent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any

other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution from one or more:

- (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

- (b) Annuity contracts described in section 403(b) of the internal revenue code.

- (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

3. Accepting from a member a direct transfer from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code of an amount that would otherwise be eligible to be rolled over to ASRS under the provisions of section 408(d)(3)(A)(ii) of the internal revenue code if the amount had been received by the member and would have otherwise been includible in the member's gross income but for the direct transfer.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.
3. "Defined contribution plan" has the same meaning prescribed in section 38-769.
4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.
5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.
6. "Limitation year" has the same meaning prescribed in section 38-769.
7. "Participating employer" means an employer that participates in ASRS.
8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

**38-748. Employer payments for ineligible contributions; definitions**

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS shall provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

**38-749. Employer termination incentive program; employer payment of actuarial cost; definition**

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

### 38-750. Transfers out of the system

A. If an employee has made an irrevocable election pursuant to section 38-747, subsection B or D and transfers participation to another defined benefit retirement system or plan of this state without a termination of employment, within ninety days after the date of the transfer, ASRS shall transfer to the subsequent defined benefit retirement system or plan the amount the employee paid for the purchase of the credited service plus interest as determined by ASRS.

B. If the assets transferred from ASRS are less than the cost of the benefits accrued relative to the credited service as calculated pursuant to section 38-922, subsection B, paragraph 2, and unless a law otherwise provides, the employee shall elect either to pay the difference to the subsequent defined benefit retirement system or plan or accept a reduced amount of service credits. If the employee elects to pay the difference, the amount paid shall be added to the employee's accumulated contribution account balance. If the employee elects to accept a reduced amount of service credits, the amount of service credits granted shall be equal to the amount of service credits purchased multiplied by the ratio of the amount of assets transferred to the amount calculated pursuant to section 38-922, subsection B, paragraph 2.

C. The transferred employee and the employer shall complete the terms of the irrevocable election by making payments to ASRS.

D. If the employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, on termination of employment the employee shall elect to have ASRS:

1. Promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to elect to have the assets transferred within thirty days after termination of employment, the employee is deemed to have made an election as prescribed in paragraph 2.

2. On written request by the employee, promptly return to the employee the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If no application is received by ASRS within sixty days after termination of employment, ASRS shall issue the payment directly to the employee.

E. If the employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, after termination of employment the employee may elect within thirty days of termination of employment to have ASRS promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to make the election under this subsection, ASRS shall deem the employee as an inactive member of ASRS.

F. If an employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is

receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is eligible to transfer to the retirement system or plan, but the election to transfer terminates the benefit from ASRS on the effective date of the transfer.

G. If an employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is not eligible to transfer to another retirement system or plan.

**38-751. Nonparticipatory employer liability allocation; exemption; definitions**

A. ASRS shall establish a separate fund for an employer, other than a charter school, that is no longer participating in ASRS as a result of any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state, dissolves.
3. Through legislative action, the employer is no longer enrolling new employees in ASRS or no longer contributing to ASRS on behalf of current employees or groups of employees who otherwise would be eligible for ASRS membership.

B. For a nonparticipating employer described in subsection A of this section, ASRS shall allocate an actuarial accrued liability and a designated asset amount to the nonparticipating employer's separate fund as of the nonparticipation date, which shall be calculated as follows:

1. The actuarial accrued liability shall equal the sum of the plan employer actuarial accrued liability and the LTD program employer actuarial accrued liability. Actuarial accrued liability shall be calculated based on the same actuarial assumptions and methods as the actuarial valuation performed immediately preceding the nonparticipating employer's nonparticipation date.

2. The designated asset amount shall equal the sum of the following:

- (a) The plan employer actuarial accrued liability multiplied by the plan funded percentage.
- (b) The LTD program employer actuarial accrued liability multiplied by the LTD program funded percentage.

C. All monies and securities transferred to the nonparticipating employer's separate fund shall be credited to that fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes. ASRS shall make all decisions regarding the nonparticipating employer's separate fund.

D. After establishing the nonparticipating employer's separate fund, the fund shall be adjusted for all of the following:

1. All contributions made by employees of the nonparticipating employer.
2. All contributions made by the nonparticipating employer.

3. All plan, all LTD program and any other benefits paid to the nonparticipating employer's members who are active, inactive, retired or on long-term disability.

4. All plan, all LTD program and any other benefits paid to the survivors of the nonparticipating employer's members.

5. The applicable share of the investment gains and losses.

6. Expenses associated with the administration of the nonparticipating employer's separate fund, including any administrative, development, actuarial, legal, custodial and investment management costs associated with the fund. These expenses shall be paid directly by the nonparticipating employer or included in the employer's liability for the purposes of determining the employer's contribution rate.

E. After establishing the nonparticipating employer's separate fund, the nonparticipating employer and any employees of that employer who are enrolled in ASRS shall continue to have contribution requirements to the nonparticipating employer's separate fund. The contribution requirements shall be calculated as follows:

1. All employees of the nonparticipating employer who are enrolled in ASRS shall continue to make contributions through payroll deductions based on the contribution rate determined for the employees of participating employers of ASRS pursuant to section 38-736.

2. The nonparticipating employer shall continue to make contributions through lump sum payments in accordance with section 38-735, equal to the sum of:

(a) Contributions owed through payroll deductions based on the contribution rate determined for participating employers pursuant to section 38-737.

(b) The amount required to amortize the past service funding requirement in the nonparticipating employer's separate fund over a period that is determined by the board and that is consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the nonparticipating employer's separate fund is less than one hundred percent funded.

F. The ASRS actuary shall determine the actuarial assumptions used to determine the contribution requirements for the nonparticipating employer under subsection E of this section. Notwithstanding section 38-737, the contribution for the nonparticipating employer may not be determined as a percentage of compensation due to the anticipated decline of compensation for employees of the nonparticipating employer participating in ASRS. The nonparticipating employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS at a rate that is consistent with the rate paid by the participating employers. Each fiscal year, amounts that are not remitted through payroll contributions pursuant to this section shall be invoiced to the employer and shall be paid within the same fiscal year the nonparticipating employer is invoiced.

G. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

H. For the purposes of calculating an employer's liability under this section, members who are active, inactive, retired or on long-term disability are considered employees of the nonparticipating employer

if the member's most recent employer was the nonparticipating employer as of the nonparticipation date.

I. This section does not apply to an employer whose existence was terminated by legislative action or otherwise became a nonparticipating employer as described in subsection A of this section on or before January 1, 2013.

J. For the purposes of this section:

1. "LTD program" means the program established by article 2.1 of this chapter.

2. "LTD program employer actuarial accrued liability" means the actuarial accrued liability for the employer's active and inactive members and the open LTD program claims for the employees of the employer as of the nonparticipation date.

3. "LTD program funded percentage" means the total market value of LTD program assets divided by the total LTD program actuarial accrued liabilities, as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the LTD program funded percentage is one hundred percent.

4. "Nonparticipation date" means the date on which the employer is no longer participating in ASRS.

5. "Plan" means the retirement plan established by this article.

6. "Plan employer actuarial accrued liability" means the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for the employer's active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date.

7. "Plan funded percentage" means the plan's total market value of assets divided by the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for all active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the plan funded percentage is one hundred percent.

**38-755. Member's account information: beneficiary designation: spousal consent: confidentiality**

A. ASRS shall make information concerning a member's account accessible to the member in written or electronic form. This information shall include the member's current account balance, contact information, beneficiary election, estimated retirement date and estimated benefit amount.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty percent of the member's account, unless naming or maintaining the current spouse as a beneficiary violates another law, an existing contract or a court order. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. In order to protect a member's identity from fraud, abuse, theft or civil or criminal activity, information about a member is not subject to inspection pursuant to title 39, chapter 1, article 2, except that the following information about a member is subject to inspection:

1. The member's name.
2. Whether the member is an active member as defined in section 38-711, an inactive member as defined in section 38-711 or a retired member as defined in section 38-711.
3. The member's current or most recent employer.
4. For a retired member, the average monthly compensation, as defined in section 38-711, used to calculate the member's retirement benefit.
5. The credited service as defined in section 38-711 on account for an active or inactive member or the credited service used to calculate the retirement benefit for a retired member.
6. The gross pension amount actually paid to a retired member.
7. The most recent retirement date.
8. The current account balance for an active or inactive member.
9. The gross long-term disability program benefit actually paid to a member with a disability pursuant to article 2.1 of this chapter.
10. The amount paid to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
11. The amount of credited service purchased pursuant to section 38-743, 38-744 or 38-745.

E. ASRS shall not permit any unredacted record to be inspected that contains a member's social security number, bank account information, address, telephone number, e-mail address, medical records, health insurance information, beneficiary or survivor information or disability information or any information that is protected by any federal or state law.

**38-756. [Outreach education program](#)**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.
7. The development of a creative promotional program using available media outlets.

C. ASRS shall present, either in person or through the use of electronic means, the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

### 38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. Except as provided in section 13-713, a member's right to the member's normal retirement benefit as described in subsection B of this section is nonforfeitable by an employer or ASRS on attainment of the member's normal retirement date.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a straight life annuity that equals the result of paragraph 1 of this subsection multiplied by paragraph 2 of this subsection when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 percent if the member does not have more than 19.99 years of credited service.

(b) 2.15 percent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 percent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 percent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

### 38-758. Early retirement

A. A member who has attained age fifty, who has terminated employment with all employers and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. For a member whose membership in ASRS commenced before July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three percent for each unit of one or fraction of one by which the sum is less than eighty.

C. For a member whose membership in ASRS commenced on or after July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 at the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this subsection for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixty-second birthday if the member has at least ten years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

#### 38-759. Late retirement; definition

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the member's required beginning date.

C. For the purposes of this section, "required beginning date" has the same meaning prescribed in section 38-775.

#### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor life annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's

effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the life annuity of the member under the same joint and survivor life annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted life annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor life annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor life annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

#### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection E.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

#### **38-763. Survivor benefits after retirement**

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits distributed by ASRS. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

#### **38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. All retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. Except as provided in subsection D of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement

benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

D. The board may pay the entire retirement benefit in a lump sum pursuant to subsection C of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

E. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783 but is not eligible for a benefit increase pursuant to section 38-767.

F. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

G. Notwithstanding subsection H of this section, a member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

H. A member may elect to make changes to a retirement application before the member's retirement date. A member may exercise a onetime election to make changes to the retirement application within sixty days after the member's retirement date. The member may not change the member's retirement date, and any changes made to the retirement application are retroactive to the member's retirement date.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

#### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### **38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.
2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A retired member whose retirement benefits have been suspended pursuant to subsection A of this section shall repay ASRS any retirement benefits received by the member from the date ASRS notifies the member in writing that the member's employment resulted in active membership in ASRS pursuant to subsection A of this section, from the date ASRS determines that the member knew or should have known that the member's employment resulted in membership in ASRS pursuant to subsection A of this section or for any other period that approximates the duration of the violation, as determined by ASRS.

C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

- (a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

- (b) Allows a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

E. A retired member who returns to work pursuant to subsection D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. An employer that engaged the retired member to work pursuant to this section shall pay to ASRS an amount equal to the rate established by the actuary pursuant to section 38-766.02, subsection B for the period starting with the first day the retired member began working after retirement through the earlier of:

1. The date the member terminates employment.
2. The date the member resumes active membership pursuant to subsection A of this section and the member and employer are required to make contributions pursuant to section 38-736, 38-737 or 38-738.

**38-766.01. Retired members; return to work**

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated direct employment with an employer at least three hundred sixty-five consecutive days before returning to work.
3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. Notwithstanding section 38-766 and subsection A of this section, at a retired member's election, a retired member may return to work as a state elected official who is subject to term limits and still be eligible to receive retirement benefits.

C. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

D. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days after returning to work.

E. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

F. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

**38-766.02. Retired members; return to work; employer contribution payments; exception; definitions**

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work with an ASRS employer in any capacity in a position ordinarily filled by an employee of the employer or in a position that is similar in duties and responsibilities to that of a position ordinarily filled by an employee of the employer. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two percent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. An employer is not required to pay contributions at an alternate contribution rate on behalf of a retired member under subsection A of this section if the retired member returns to work with the employer in a position that is currently filled by an employee of the employer who is an active member and for which the employer is currently required to pay and is paying contributions on behalf of the active member in that same position pursuant to sections 38-736 and 38-737. An employer may pay contributions at an alternate contribution rate for a retired member who meets the requirements for an exemption under this subsection.

G. For contributions made pursuant to subsection F of this section beginning July 1, 2019, if ASRS and the employer determine that the alternate contribution rate does not apply to a retired member who returns to work for whom the employer has paid contributions at the alternate contribution rate,

the employer may request an employer credit, not including interest, for those contributions within ninety days after the end of the fiscal year in which the contributions were paid. If ASRS determines that an employer credit is not feasible, ASRS shall issue a refund to an employer in a form determined by ASRS.

H. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten percent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

**38-767. Benefit increases: applicability**

A. For a member whose membership commenced before the effective date of this amendment to this section, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which

an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.
3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member who was eligible for an annual benefit increase pursuant to subsection A of this section had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.
2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.
3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined

contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

**38-768. Minimum retirement benefit**

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members, is \$600.
2. For beneficiaries, is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection C is not eligible for a minimum benefit as provided by this section.

**38-769. Maximum retirement benefits; termination; definitions**

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In

addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an

employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

### 38-770. [Eligible rollover distribution: definitions](#)

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections allowed in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D,

paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) Beginning January 1, 2008, a Roth individual retirement account described in section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account that satisfies the requirements of section 408(p) of the internal revenue code.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

**38-771. Benefit options for transferred defined contribution program members: definitions**

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by

section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.

3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747,

subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747,

subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.
2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.
3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.
4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this

section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:

1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.

5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.

6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.

7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.

8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

#### 38-772. Prior service under defined contribution program administered by ASRS; definitions

A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.

B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.

C. For the purposes of this section:

1. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

2. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

#### 38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of the board's acceptance of the domestic relations order, and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall:

1. Not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.
2. Value the member's benefit on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.
2. The name and last known mailing address of each alternate payee who is covered by the order.
3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.
4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.
2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.
2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. If an alternate payee predeceases the member, amounts payable to the alternate payee cease on the death of the alternate payee. ASRS shall cause the amount formerly payable to the alternate payee to revert to the member.

H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

### 38-774. Excess benefit arrangement

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

### 38-775. Required distributions: definitions

A. This section applies for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006. In applying the requirements of this section, the following operational provisions govern:

1. Except as provided in the following sentence, the requirements of this section take precedence over any inconsistent provisions of this article and article 2.1 of this chapter. The rules of this section shall not restrict any form, calculation, adjustment or payment of benefit provided under this article in effect on April 17, 2002, if the form, calculation, adjustment or payment of benefit satisfied section 401(a)(9) of the internal revenue code based on a reasonable and good faith interpretation of that section.

2. All distributions required under this section shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

3. Notwithstanding this section, other than paragraph 2 of this subsection, distributions may be made under a designation made before January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal responsibility act of 1982 (P.L. 97-248) and the provisions of this article that relate to that section.

B. The member's entire interest shall be distributed, or begin to be distributed, to the member not later than the member's required beginning date.

C. If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, not later than as follows:

1. If the member's surviving spouse is the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained seventy-two years of age, if later.

2. If the member's surviving spouse is not the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. For purposes of this subsection and subsection G of this section, distributions are considered to begin on the member's required beginning date or the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection, the date distributions are considered to begin is the date distributions actually commence.

4. If the member dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date prescribed in paragraph 1 or 2 of this subsection as long as the member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the member's death. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the member or the surviving spouse begin, this paragraph applies as if the surviving spouse were the member.

D. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made pursuant to subsections E, F and G of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions shall be made pursuant to the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the internal revenue code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury that apply to individual accounts.

E. The following provisions govern the determination of the amount to be distributed each calendar year:

1. If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year.

(b) The distribution period shall be over a life or lives or over a period certain not longer than the period described in subsection F or G of this section.

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum allowed.

(d) Payments shall either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics.

(ii) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit on death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection F of this section dies or is no longer the member's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the internal revenue code.

(iii) To provide cash refunds of employee contributions on the member's death.

(iv) To pay increased benefits that result from a plan amendment.

2. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection C, paragraph 1 or 2 of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bimonthly, monthly, semiannually or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

3. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

F. The following provisions govern annuity distributions that commence during a member's lifetime:

1. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in question and answer number 2 of section 1.401(a)(9)-6 of the regulations issued by the United States secretary of the treasury. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence applies to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches seventy years of age, the applicable distribution period for the member is the distribution period for seventy years of age under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury plus the excess of seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

G. The following provisions govern minimum distributions if a member dies before the date distributions begin:

1. Except as provided in subsection C, paragraph 4 of this section, if the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning not later than the time prescribed in subsection C, paragraph 1 or 2 of this section, over the life of the designated beneficiary or over a period certain not exceeding either of the following:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies before distributions to the surviving spouse begin, this subsection applies as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection C, paragraph 1 of this section.

H. If a member dies after the member's required beginning date and the member had not commenced distribution of retirement benefits, ASRS shall treat the member as having commenced distribution of retirement benefits on the member's required beginning date. Notwithstanding section 38-776, ASRS shall determine the member's retirement benefit as a straight annuity as of the date of the member's required beginning date. The member's estate is entitled to the member's benefit payments and any remaining member contributions on account shall be disbursed pursuant to section 38-763.

I. For the purposes of this section:

1. "Designated beneficiary" means the individual who is designated as the member's beneficiary to receive benefits under this article and is the designated beneficiary under section 401(a)(9) of the internal revenue code and question and answer number 1 of section 1.401(a)(9)-4 of the regulations issued by the United States secretary of the treasury.

2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection C of this section.

3. "Life expectancy" means life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury.

4. "Required beginning date" means the date payment of a member's benefits shall commence in accordance with section 401(a)(9)(C) of the internal revenue code.

### 38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, an existing contract or a court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

38-781. Supplemental employee deferral plan; public employees; administration; immunity; definitions

A. One or more supplemental employee deferral plans may be established pursuant to this section to provide public employees an opportunity to save additional tax-deferred monies for retirement.

B. ASRS may establish, administer, manage and operate supplemental employee deferral plans for employers.

C. ASRS may:

1. Employ services it deems necessary, including legal services, for the operation and administration of the plans.

2. Administer the plans through contracts with multiple vendors.

3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plans.

4. For the purposes of this section, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

D. A supplemental employee deferral plan does not replace an employee's existing state defined benefit retirement plan.

E. If an employer, including this state, elects to participate in a supplemental employee deferral plan, any employee of the employer who meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan may participate in the supplemental employee deferral plan.

F. Notwithstanding subsection E of this section, on or after July 1, 2022, an employee of an employer who is not eligible to participate in a public retirement system established by article 3, 3.1, 4, 4.1 or 6 of this chapter may elect to participate in a supplemental employee deferral plan if the employee meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan.

G. Employee participation in a supplemental employee deferral plan requires the participant's employer to make salary reductions from the participant's compensation at no cost to the employee, ASRS or any vendor retained by ASRS and contribute such salary reductions to the plan. An employer may make employer contributions to the supplemental employee deferral plan if the plan allows. The employer shall submit any reports required by the plan. If the participant is an active member, any compensation deferred by an employee under a plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits provided in this article earned by any employee participating in the plan.

H. Employee contributions and earnings on employee contributions are immediately vested. Employer contributions, if any, and the earnings on employer contributions shall vest according to the schedule established by the employer, if the employer completes and submits a schedule to ASRS. If the employer does not complete and submit a schedule to ASRS, employer contributions, if any, and the earnings on employer contributions shall vest according to the default schedule established by ASRS.

I. Notwithstanding any other law, this state and its officers and employees, the board and ASRS are immune from civil liability and are not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury arising out of the supplemental employee deferral plan.

J. A political subdivision or a political subdivision entity that is not participating in ASRS may elect to allow its employees to participate in a supplemental employee deferral plan that is overseen by ASRS pursuant to this section by entering into an agreement with ASRS. A political subdivision or political subdivision entity that elects to allow its employees to participate in a supplemental employee deferral plan pursuant to this subsection:

1. Is not an employer for the purposes of this article and its employees are not members for the purposes of this article.

2. May not provide any information indicating or implying that the political subdivision or political subdivision entity offers any ASRS benefits other than participation in a supplemental employee deferral plan pursuant to this subsection. A political subdivision or political subdivision entity that violates this paragraph may not elect to allow new employees to participate in a supplemental employee deferral plan pursuant to this subsection until the violation is corrected at the discretion of ASRS.

3. May elect to join ASRS pursuant to section 38-729.

K. For the purposes of this section:

1. "State" means this state, including any department, office, board, commission, agency or university, but does not mean any school district or community college district.

2. "Supplemental employee deferral plan" means a tax deferred annuity described in section 403(b) of the internal revenue code, including a custodial account described in 403(b)(7) of the internal revenue code, and an eligible deferred compensation plan described in section 457(b) of the internal revenue code. A supplemental employee deferral plan shall comply with all applicable provisions of the section of the internal revenue code under which such plan is adopted and maintained.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not

use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to

subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement

system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their

provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

[38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions](#)

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if

the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

- (a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

- (b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement

increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 38-791. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 8-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-792. Exemptions from execution, attachment and taxation; exception

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B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

### 38-793. Violation: classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

### 38-794. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

### 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member

develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

#### 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

#### 38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

#### 38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

#### 38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

#### 38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

#### 38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines

pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it

includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

#### 38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### 38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

#### 38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

#### 38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

#### 38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing or has contributed.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

### **38-922. [Transfer or redemption of service credits](#)**

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

[38-923. Transfer of service credits between municipal retirement systems and special retirement plans: definitions](#)

A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system

or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

C. An active or inactive member of a retirement system or plan of a municipality of this state or of the elected officials' retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

D. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.

2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the retirement system or plan.

(c) Is not currently making contributions to the retirement system or plan.

(d) Has not withdrawn contributions from the retirement system or plan.

3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

#### 38-924. Transfer of service credits

A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:

1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.

2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.

C. If a member decides to transfer:

1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.

D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

**ARIZONA STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-117



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 13, 2024

**SUBJECT: STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-117

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System Board (ASRS) seeks to amend one (1) rule in Title 2, Chapter 8, Article 1 related to Return to Work After Retirement. Specifically, the ASRS seeks to amend its rules to clarify how a retired member may return to work.

The ASRS indicates this rulemaking will clarify how a retiree's benefits may be affected by returning to work, thereby increasing understandability of what benefits the member may continue to receive after returning to work. The ASRS indicates clarifying how benefits are affected when a member returns to work will ensure that retirees' benefits are processed more efficiently, if they return to work. The ASRS indicates these rules will increase the clarity and effectiveness of the return to work requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS processes benefits after a retiree returns to work.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The ASRS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The ASRS states that a member who retires may return to work and return to active membership status or continue to receive their benefits if the member meets certain statutory requirements. The ASRS states that without this rulemaking, retirees will not have an adequate understanding of how returning to work after retirement may affect their benefits. By promulgating these rules, retirees will have a better understanding of when they are eligible to return to work and continue receiving benefits. The ASRS states that the rule will have minimal economic impact, if any, because it merely clarifies statutory restrictions related to how a retired member may return to work. Stakeholders include the ASRS and retirees of the ASRS. The ASRS indicates it currently has a total membership of approximately 652,864 and 664 employers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS processes benefits after a retiree returns to work.

6. **What are the economic impacts on stakeholders?**

The ASRS states that the rulemaking does not directly affect state agencies and does not provide any benefits or impose any costs on political subdivisions. They state no businesses, of any size, are directly affected by the rulemaking. The ASRS believes there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The ASRS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The ASRS indicates it received no public comments related to this rulemaking and no one attended the oral proceeding held on September 5, 2023.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The ASRS indicates the proposed amended rules do not require issuance of a permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The ASRS indicates there is no federal law applicable to these rules.

11. **Conclusion**

This regular rulemaking from the ASRS seeks to amend one (1) rule in Title 2, Chapter 8, Article 1 related to Return to Work After Retirement. Specifically, the ASRS seeks to amend its rules to clarify how a retired member may return to work.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 8, 2024

Ms. Nicole Sornsins, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System Board**

Dear Ms. Sornsins:

The attached final rule package regarding returning to work after retirement is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 18, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Chief Strategy Officer;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Katie Daigneault  
Chief Strategy Officer



Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies statutory restrictions related to how a retired member may return to work.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on September 5, 2023.

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

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 1. RETIREMENT SYSTEM**

Section

R2-8-117. Return to Work after Retirement

**ARTICLE 1. RETIREMENT SYSTEM**

**R2-8-117. Return to Work After Retirement**

**A.** Unless otherwise specified, in this Section:

1. “Commencing employment” means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
2. “Returns to work” means the member retired from the ASRS prior to Commencing Employment with an Employer.

**B.** Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member’s current Employers through the retired member’s secure website account within 30 days of the retired member Commencing Employment with an Employer.

**C.** Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member’s employment information and submit the verified Working After Retirement form to the ASRS through the Employer’s secure website account for each retired member who returns to work with the Employer.

**D.** After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer’s secure website account within 30 days of a change in the actual hours or intent of each retired member’s employment that results in:

1. The member’s number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
2. The member’s number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.

**E.** The Working After Retirement form shall contain the following information:

1. The retired member’s Social Security number or U.S. Tax Identification number;

2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F.** Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G.** By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H.** If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I.** If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J.** Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.
- K.** If a member elects to continue receiving the member's retirement benefit when the member Returns to Work according to A.R.S. § 38-766.01, the member's election is irrevocable, unless the member terminates employment with the Employer for which the member made the election.

- L. The ASRS shall suspend any Premium Benefit a member is receiving according to 2 A.A.C. 8, Article 2 if the member Returns to Work and resumes active membership in ASRS.**
- M. A member who Returns to Work is not eligible to request a return of contributions according to R2-8-115 for contributions remitted during the period of employment for which the member Returns to Work.**
- N. If a member received a lump sum payment according to R2-8-126(P), the ASRS shall not include any compensation and credited service the member earned prior to the date the member Returns to Work when the member re-retires according to R2-8-127.**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to how a retired member may return to work.

a. The conduct and its frequency of occurrence that the rule is designed to change:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. A member who retires may return to work and return to active membership status, or continue to receive their benefits if the member meets certain statutory requirements.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Without this rulemaking, retirees will not have an adequate understanding of how returning to work after retirement may affect their benefits. Notice of such information is necessary in order to ensure that retirees have adequate understanding of how their benefits may be affected by returning to work after retirement. By promulgating these rules, retirees will have a better understanding of when they are eligible to return to work and continue receiving benefits. Increasing understanding of such requirements will increase the retiree's understanding of how the ASRS manages the return to work program and reduce confusion, which will reduce burden on the public.

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how a retiree's benefits may be affected by returning to work, thereby increasing understandability of what benefits the member may continue to receive after returning to work. Clarifying how benefits are affected when a member returns to work will ensure that retirees' benefits are processed more efficiently, if they return to work. As discussed above and below, these rules will increase the clarity and effectiveness of the return to work requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS processes benefits after a retiree returns to work.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies statutory restrictions related to how a retired member may return to work.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400

Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All retirees of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 652,864 and 664 employers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

---

<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

- a. Identification of the small business subject to the rulemaking:  
No businesses, regardless of size, are subject to the rulemaking.
  
  - b. Administrative and other costs required for compliance with the rulemaking:  
Not applicable.
  
  - c. Description of methods that may be used to reduce the impact on small businesses:  
Not applicable.
8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
All ASRS retirees are directly affected by the rulemaking. The effect has been previously described above.
9. Probable effects on state revenues:  
There will be no effect on state revenues.
10. Less intrusive or less costly alternative methods considered:  
The ASRS believes this is the least costly and least intrusive method because it will clarify how ASRS processes benefits after a retiree returns to work.

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
April 1, 2023 through June 30, 2023

*Section R2-8-301 numbering corrected and subsection reference under the “Estimated Social Security disability income amount” definition corrected. No other changes have been made to this Chapter since Supp. 22-3 (Supp. 23-2).*

**Questions about these rules? Contact:**

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**PREFACE**

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

**RULE HISTORY**

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

**AUTHENTICATION OF PDF CODE CHAPTERS**

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

**HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

**ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

**PERSONAL USE/COMMERCIAL USE**

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*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-711 et seq.

**Supp. 23-2**

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. RETIREMENT SYSTEM**

Section		
R2-8-101.	Repealed .....	4
R2-8-102.	Repealed .....	4
R2-8-103.	Repealed .....	4
R2-8-104.	Definitions .....	4
R2-8-105.	Repealed .....	5
R2-8-106.	Reserved .....	5
R2-8-107.	Reserved .....	5
R2-8-108.	Reserved .....	5
R2-8-109.	Reserved .....	5
R2-8-110.	Reserved .....	5
R2-8-111.	Reserved .....	5
R2-8-112.	Reserved .....	5
R2-8-113.	Emergency Expired 5	
R2-8-114.	Emergency Expired .....	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement .....	7
R2-8-118.	Application of Interest Rates .....	8
R2-8-119.	Expired .....	8
R2-8-120.	Repealed .....	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions .....	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	9
Table 1.	Expired .....	9
Table 2.	Expired .....	9
Table 3.	Repealed .....	9
Table 3A.	Expired 10	
Table 3B.	Expired .....	10
Table 4.	Expired 10	

Table 4A.	Repealed .....	10	
Table 4B.	Repealed .....	10	
Table 4C.	Repealed .....	10	
Table 5.	Expired 10		
Table 6.	Expired 10		
Table 7.	Expired 11		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		11
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application 12		
R2-8-127.	Re-Retirement Application 15		
R2-8-128.	Joint and Survivor Retirement Benefit Options 16		
R2-8-129.	Period Certain and Life Annuity Retirement Options .....	16	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant .....	16	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation .....	18	
R2-8-132.	Survivor Benefit Options 19		
R2-8-133.	Survivor Benefit Applications .....	20	
Table 1.	Repealed .....	22	
Table 2.	Repealed .....	22	
Table 3.	Repealed .....	22	
Table 4.	Repealed .....	22	
Table 5.	Repealed .....	22	
Table 6.	Repealed .....	23	
Table 7.	Repealed .....	23	
Table 8.	Repealed .....	23	
Table 9.	Repealed .....	23	
Table 10.	Repealed .....	23	
Table 11.	Repealed .....	23	
Exhibit A.	Repealed .....	23	
Exhibit C.	Repealed .....	23	
Exhibit G.	Repealed .....	25	
Exhibit H.	Repealed .....	25	
Exhibit I.	Repealed .....	26	
Exhibit J.	Repealed .....	26	
Exhibit K.	Repealed .....	26	

## ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)*

*(Supp. 17-2).*

*Article 2,*

*consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section			
R2-8-201.	Definitions .....	27	
R2-8-202.	Premium Benefit Eligibility and Benefit Determination		28
R2-8-203.	Payment of Premium Benefit .....	28	
R2-8-204.	Premium Benefit Calculation .....	29	
R2-8-205.	Premium Benefit Documentation .....	29	
R2-8-206.	Six-Month Reimbursement Program .....	29	
R2-8-207.	Optional Premium Benefit .....	30	

## ARTICLE 3. LONG-TERM DISABILITY

*Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).*

Section			
R2-8-301.	Definitions .....	31	
R2-8-302.	Application for Long-Term Disability Benefit .	31	
R2-8-303.	Long-Term Disability Calculation .....	31	
R2-8-304.	Payment of Long-Term Disability Benefit ...	32	
R2-8-305.	Social Security Disability Appeal .....	32	
R2-8-306.	Approval of Social Security Disability .....	32	

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	
	32	
R2-8-402.	General Procedures	
	32	
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	32
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	
	.....	33
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	33

**ARTICLE 5. PURCHASING SERVICE CREDIT**

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	
	34	
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	35
R2-8-503.	Requirements Applicable to All Service Credit Purchases	36
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	
	.....	36
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	36
R2-8-506.	Cost Calculation for Purchasing Service Credit	36
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	36
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	
	.....	37
R2-8-509.	Required Documentation and Calculations for Military Service Credit	
	.....	37
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	
	.....	38
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	
	.....	39
R2-8-512.	Purchasing Service Credit by Check, Cashier’s Check, or Money Order	
	.....	39
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	
	39	
R2-8-513.01.	Irrevocable PDA and Transfer of Employment to a Different Employer	
	.....	41
R2-8-513.02.	Termination Date	
	41	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	.....	41
R2-8-515.	Repealed .....	42
R2-8-516.	Expired .....	42
R2-8-517.	Expired .....	42
R2-8-518.	Repealed .....	42
R2-8-519.	Purchasing Service Credit by Termination Pay	
	43	
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	.....	43
R2-8-521.	Adjustment of Errors	
	44	

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	44	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	.....	44
R2-8-603.	Petition for Rulemaking	
	44	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	.....	44
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	.....	44
R2-8-606.	Oral Proceedings	
	45	
R2-8-607.	Petition for Delayed Effective Date	
	45	

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section

R2-8-701.	Definitions	
	45	
R2-8-702.	General Information	
	45	
R2-8-703.	Employer’s Discovery of Error	
	46	
R2-8-704.	Member’s Discovery of Error	
	46	
R2-8-705.	ASRS’ Discovery of Error	
	46	
R2-8-706.	Determination of Contributions Not Withheld	
	46	
R2-8-707.	Submission of Payment	
	47	
R2-8-708.	Expired .....	47
R2-8-709.	Repealed .....	47

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section

R2-8-801.	Definitions .....	47
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	47
R2-8-803.	Reimbursement of Overpayments	
	48	
R2-8-804.	Collection of Overpayments from Forfeiture	
	48	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	48
R2-8-806.	Collection of Overpayments from Survivor Benefit	
	.....	49
R2-8-807.	Collection of Overpayments from LTD Benefit	
	49	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	49
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	49
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	49

**ARTICLE 9. COMPENSATION**

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section

R2-8-901.	Definitions .....	49
R2-8-902.	Remitting Contributions .....	49
R2-8-903.	Accrual of Credited Service .....	50
R2-8-904.	Compensation from An Additional Employer .	50
R2-8-905.	Expired .....	50

**ARTICLE 10. MEMBERSHIP**

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section

R2-8-1001.	Definitions	
	50	
R2-8-1002.	Employee Membership	
	50	
R2-8-1003.	Charter School Employer Membership .....	51
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	.....	52
R2-8-1005.	Employer Reporting	

R2-8-1006.	53	Prior Service Purchase Cost for New Employers
53		

**ARTICLE 11. TRANSFER OF SERVICE CREDIT**

Section		
R2-8-1101.	Definitions	
	54	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	54
R2-8-1103.	Transferring Service to Other Retirement Plans	
	.....	55

## ARTICLE 1. RETIREMENT SYSTEM

### R2-8-101. Repealed

#### Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-102. Repealed

#### Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-103. Repealed

#### Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
  - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
  - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
  - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
  - a. The requirements of A.R.S. § 38-773(C);
  - b. The date of the member and alternate payee's marriage;
  - c. The date of divorce or the date in which the community property interest ended;
  - d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
  - e. How the member's ASRS benefits should be split in specific amounts for the following possible events:
    - i. The member's retirement;
    - ii. Return of contributions and termination of membership according to R2-8-115; and
    - iii. The death of the member prior to retirement;
  - f. Whether the member may transfer all ASRS service credit to another retirement system;
  - g. Whether the member is required to maintain the alternate payee as the member's beneficiary;
  - h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
  - i. The judge's dated signature.
10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended

by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;
  - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
  - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
  - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
  - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
  - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

- j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
  - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
  - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
  - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
- a. The type of eligible retirement plan; and
  - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  - 6. The Employer's name and telephone number;
  - 7. The Employer Number;
  - 8. The name and title of the authorized Employer representative;
  - 9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

#### **Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-116. Alternate Contribution Rate**

- A. For purposes of this Section, the following definitions apply:
- 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  - 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  - 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  - 4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest	Assumed Actuarial Investment	Interest Rate Used to Determine Return of Contributions Upon
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Rate Change	Earnings Rate	Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  1. The interest and investment return rate assumptions are determined by the Board.
  2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**Table 1. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614,

effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former

Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3).

Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and

- b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
3. "Compensation" means the same as in A.R.S. § 38-711(7).
4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
  - a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
  1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

#### **Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

#### **R2-8-126. Retirement Application**

- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
  1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  3. "Applicable retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or
    - b. The date a member re-retires from the ASRS after returning to active membership.
  4. "Conservator" means the same as in A.R.S. § 14-7651.
  5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  6. "Legal documentation" means:
    - a. One document issued from a United States government entity; or
    - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
  7. "LTD" means the same as in R2-8-301.
  8. "Irrevocable PDA" means the same as in R2-8-501.
  9. "On File" means the same as in R2-8-115.
  10. "Original retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. The member's current mailing address; if not On File with ASRS;
  5. The member's date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary's full name;
    - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary's date of birth;
    - d. The beneficiary's relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
    - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member's spouse's full name; and
    - d. The member's spouse's notarized signature;
  12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  1. The type of account and account number to which the member is electing to roll over;
  2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
  - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  - 2. The member's total salary paid during their last fiscal year;
  - 3. The member's compensation for the last pay period;
  - 4. The name and title of the authorized Employer representative;
  - 5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  - 1. The member's full name;
  - 2. The member's bank account routing number;
  - 3. The member's bank account number; and
  - 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

#### **Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D)

effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-127. Re-Retirement Application**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re- retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C.** If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

#### **R2-8-128. Joint and Survivor Retirement Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C.** A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F.** Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-129. Period Certain and Life Annuity Retirement Options**

- A.** The definitions in R2-8-126 apply to this Section.

- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
  - a. Full name;
  - b. Social Security number, if the contingent annuitant is a U.S. citizen;
  - c. Date of birth; and
  - d. Legal relationship to the member.
- 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
  - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
- 8. Whether the spouse's consent is not required because:
  - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.
- Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

- A. The definitions in R2-8-126 apply to this Section.
- B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
  - 1. The Member's full name and one or more of the following information:
    - a. The Member's Social Security number or U.S. Tax Identification number; or
    - b. The Member's address; or
    - c. The Member's date of birth;
  - 2. The following information for the beneficiary:
    - a. The full name of the person or entity the member is designating as beneficiary;
    - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
    - c. The percentage of the benefit the member is allocating to the beneficiary; and
  - 3. The member's notarized signature.
- C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E. Effective July 1, 2013, a married member:
  - 1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary;
  - 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate contingent annuitant; or
    - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
  - 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
  - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
  2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** A DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:
          - (a) They are exempt from backup withholding, or
          - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
          - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
          - (3) They are a legal resident of the United States, unless they are an estate or trust.
        - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
        - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan

- will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or
      - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
    - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
    - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
    - f. If there are other surviving heirs, then the name and relationship of each surviving heir;

- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496,









#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

#### Exhibit M, Table 6. Repealed

#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

### ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

#### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 04-3).

07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  - 1. The actual cost of the Coverage premium; or
  - 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

- a. First and last name;
  - b. Social Security number or U.S. Tax Identification number;
  - c. Date of birth; and
  - d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
  - a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
  - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

### **ARTICLE 3. LONG-TERM DISABILITY**

#### **R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
3. "Estimated Social Security disability income amount" means the same as in R2-8-801(1).
4. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
5. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
6. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
7. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Numbering corrected and subsection reference under the "Estimated Social Security disability income amount" definition corrected (Supp. 23-2).

#### **R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

#### **R2-8-303. Long-Term Disability Calculation**

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

#### **R2-8-304. Payment of Long-Term Disability Benefit**

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.
- D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

#### **R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

### **ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

#### **R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E) (1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-402. General Procedures**

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

#### **R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
1. The decision the agency is making in response to the letter of appeal; and
  2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
1. The agency action the ASRS is taking in response to the letter of appeal; and
  2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the Request;
  2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I. The Board has delegated to each Health Plan Vendor the authority to:
1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  - 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

### **ARTICLE 5. PURCHASING SERVICE CREDIT**

#### **R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;

- b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
  19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
  20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
  21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
  22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
  23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
  24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
  25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
    - a. After accepting an offer to work for a new Employer;
    - b. While working as an active member for a different Employer; or
    - c. Before returning to work with any Employer within 120 days of terminating employment.
  26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
  27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
  28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
  1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
  1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
  1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
  1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
  - 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  - 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
  - 1. Leave of Absence Service;
  - 2. Military Service;
  - 3. Forfeited Service; and
  - 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
  - 1. The amount the Eligible Member wants to apply, and
  - 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
  - 1. Leave of Absence Service;
  - 2. Military Service; and
  - 3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

- A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
  - 1. One year of credited service in any plan year, or
  - 2. One month of credited service in any one calendar month.
- B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.
- C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
  - 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  - 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
  - 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and

2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
  1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
  1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
  1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
  - 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
  - 1. The name and mailing address of the Other Public Service employer;
  - 2. The position the Eligible Member held while working for the Other Public Service employer;
  - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or

- c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
  - C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
  - 1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
  - 2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
    - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
    - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
    - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
      - i. Terminating employment;
      - ii. Terminating LTD without returning to work with an Employer; or
      - iii. The effective ASRS retirement date;
    - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
    - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
    - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
    - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
  - 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;

- c. Understands that the election to use Termination Pay is binding and irrevocable;
  - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
  - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
  - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
  - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  2. Limit the payroll deduction time period to a maximum of 520 payments; and
  3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
  2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  3. Eligible Member terminates all ASRS employment without transferring employment; or
  4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
  2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
    - c. The ASRS shall not accept the following fund types:
      - i. Roth funds;
      - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      - iii. Inherited IRA;
      - iv. Coverdale Education Savings Account funds;
      - v. Hardship distributions;
      - vi. Funds not includable in gross income;
      - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      - ix. One of a series of substantially equal periodic payments made for 10 years or more;
      - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
    - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
    - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
    - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
    - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
  - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
    1. The Eligible Member's full name;
    2. The last 4 digits of the Eligible Member's Social Security number;
    3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
    4. The Authorized Representative's name and title;
    5. The Authorized Representative's telephone number; and
    6. Certification by the Authorized Representative's dated signature that:
      - a. The plan is either:
        - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
        - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
        - iii. An annuity contract described in IRC § 403(b); or
        - iv. An IRA described in A.R.S. § 38-747(H)(3);
      - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
      - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and

- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
  - 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  - 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  - 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
  - 1. The name and current address of the person submitting the petition,
  - 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  - 3. The signature of the person submitting the petition, and
  - 4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
  - 1. The name and current address of the person submitting the objection;
  - 2. Identification of the rule;
  - 3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  - 4. The signature of the person submitting the objection; and
  - 5. The date the person signs the objection.
- B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
  - 1. The name and current address of the person making the request;
  - 2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  - 3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
  - 1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  - 2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  - 3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  - 4. Explain the background and general content of the proposed rulemaking;
  - 5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  - 6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
  - 1. Name and current address of the person submitting the petition;
  - 2. Identification of the proposed rule;
  - 3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  - 4. Reason why the public interest will not be harmed by the delayed effective date;
  - 5. Signature of the person submitting the petition; and

6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B.** The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C.** The ASRS shall not waive payment of contributions or interest owed under this Article.
- D.** If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
  
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A.** If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
  - c. The member's position title during the date range listed in subsection (A)(2)(b);
  - d. Whether the member was Engaged to Work for the Employer; and
  - e. Dated signature of the member certifying the member understands:
    - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
    - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, Employer and the member, an invoice with the following:
  - 1. The amount of Eligible Service for which contributions were not withheld,
  - 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  - 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  - 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  - 5. The dollar amount of contributions to be paid to the ASRS by the member.
- F.** The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022),

with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-708. Expired**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

**R2-8-801. Definitions**

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A.** Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B.** A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C.** An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- D.** If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- E.** A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- F.** If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  - 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  - 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  - 1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  - 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  - 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  - 1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  - 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION**

**R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
  - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired**

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

## ARTICLE 10. MEMBERSHIP

### R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

#### Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

### R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.

- J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

- A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the

political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

- C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1005. Employer Reporting**

- A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;

7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
  1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1006. Prior Service Purchase Cost for New Employers**

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
  1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
  1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.
- G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.
- H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

### **ARTICLE 11. TRANSFER OF SERVICE CREDIT**

#### **R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.

5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
  1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A. Upon receipt of a request to transfer a member’s service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
  - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  - 2. The Member’s Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan’s letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  - 1. The member’s full name;
  - 2. The last four digits of the member’s Social Security number;
  - 3. The name of the Other Retirement Plan; and
  - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  - 1. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
  - 2. If the Other Retirement Plan’s Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan’s Actuarial Present Value specified in subsection (C); or
    - b. The Member’s Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  - 1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  - 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.
- H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member’s service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee’s notarized signature.

**Historical Note**

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

### 38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
  - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
  - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
  - (iv) Payments for allowances.
  - (v) Reimbursements for employee business expenses or employee personal expenses.
  - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
  - (vii) Payments made in lieu of any employer-paid insurance coverage.
  - (viii) Workers' compensation, unemployment compensation payments and disability payments.
  - (ix) Merit awards pursuant to section 38-613.
  - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
  - (xi) Payments made in the form of goods or services in lieu of gross wages.
  - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
  - (xiii) Payments in excess of the section 401(a)(17) of the internal revenue code limits established in section 38-746.
  - (xiv) Payments for any other employment benefit.
  - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
  - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
  - (c) Means any person receiving a benefit under ASRS.
  - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
  - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
  - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
    - (i) Is not otherwise an employee of an employer.
    - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
    - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

**38-712. ASRS purpose: trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.
2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.
3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.
4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming a person with a disability.
5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.

B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

38-713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.

2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

- 1. A portfolio manager acting in a fiduciary capacity.
- 2. A securities analyst.
- 3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
- 4. A chartered financial analyst in good standing as determined by the CFA institute.
- 5. A professor at the university level teaching economics or investment related subjects.
- 6. An economist.
- 7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

- 1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.
- 2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year not later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The

report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

K. In determining the past service funding period, the board shall seek to improve the funded status whenever the trust fund established by section 38-712 is less than one hundred percent funded.

**38-715. Director: powers and duties**

- A. The board shall appoint a director. The director shall serve at the pleasure of the board.
- B. The director shall appoint a deputy director and assistant directors with the approval of the board.
- C. The director, under the supervision of the board, shall:
  1. Administer this article.
  2. Be responsible for the recruitment, hiring and day-to-day management of employees.
  3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.
  4. Prescribe procedures to be followed by employers for remitting data and monies to ASRS and for receiving data and monies from ASRS.

5. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account, the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

4. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. For current or prospective employees of ASRS, the director, under the supervision of the board, may:

1. Conduct criminal records checks. The director may require a current or prospective employee to submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. Conduct credit checks for accounting, investment and other finance-related positions. The director shall establish a policy for conducting credit checks on a current employee that includes the method for determining when a credit check may be conducted, retaining records relating to the reason for the credit check and notifying an employee of the credit check and the result of the credit check.

F. The director and all persons employed by the director are subject to section 38-611 and title 41, chapter 4, article 4.

G. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following ASRS positions:

1. Director.
2. Deputy director.
3. Chief investment officer.
4. Fiduciary or investment counsel.

**38-716. Employers' responsibilities under the system**

In addition to any other requirements of this article or article 2.1, 7 or 8 of this chapter, an employer of a member shall:

1. Cooperate and collaborate with ASRS and follow all ASRS procedures to ensure the proper enrollment of members in the system.
2. Submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to make eligibility determinations and for the proper administration of the plan.
3. Attend the ASRS annual training conference.

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.

**38-718. Investment managers: general powers and duties: investment of monies: limitations**

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member

nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

### 38-718. Investment managers; general powers and duties; investment of monies; limitations

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

**38-719. Interest paid to members and employers**

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

**38-720. ASRS depository**

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

**38-721. Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.

3. Actuarial consulting fees.

4. Retiree payroll.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection E, paragraph 1 and subsection I, paragraphs 2 and 3, section 38-718, subsection D, paragraph 5 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

**38-722. Abandoned monies: disposition**

A. Except as otherwise provided in this section, the trust fund established by section 38-712 is exempt from title 44, chapter 3.

B. Monies in the ASRS trust fund and the LTD trust fund established by section 38-797.02 are presumed abandoned if the apparent owner, as defined in section 44-301, has not communicated in writing with ASRS and has not otherwise indicated an interest in the monies for the three year period following the required beginning date of distributions pursuant to section 38-775.

C. At the time monies are presumed abandoned pursuant to subsection B of this section, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.

D. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.

E. Before monies are presumed abandoned, ASRS shall attempt to contact the apparent owner in writing. If the apparent owner is a member, beginning five years before the apparent owner's required beginning date of distributions pursuant to section 38-775 and for three years after that date, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a retirement benefit. If the apparent owner is a beneficiary, beginning in the calendar year containing the fifth anniversary of the member's death and for three years, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a survivor benefit. If this notice is returned by the postal authority as undeliverable, ASRS shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with ASRS, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails and the base amount of the unclaimed monies is three hundred dollars or more, ASRS may use the services of a people search service. A fee imposed by the people search service shall not be deducted from the member's benefit and these expenditures are continuously appropriated and shall be paid from the administration account established pursuant to section 38-721 in the amount deemed necessary by the board.

F. If at any time an owner, as defined in section 44-301, establishes an entitlement in the monies, ASRS shall withdraw the monies from either the ASRS trust fund or the LTD trust fund, whichever is applicable, and pay the owner the monies or benefit to which the owner is entitled pursuant to this article or article 2.1 of this chapter, including interest at a rate determined by ASRS, if applicable.

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-724. Surrender of property subject to levy; authority to release levy and return property; definitions

A. Any person in possession of, or obligated with respect to, property subject to levy on which a levy has been made, on request of ASRS, shall surrender the property or discharge the obligation to

ASRS, except the part of the property that is, at the time of the request, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property subject to levy, on request by ASRS, is liable in person and estate to this state in a sum equal to the value of the property not so surrendered, but not exceeding the amount of debt for the collection of which the levy has been made, with costs and interest on the sum at the interest rate determined by the board from the date of the levy or, in the case of a levy described in section 38-723, subsection E, from the date the person would otherwise have been obligated to pay the amounts to the debtor. Any amount, other than costs, recovered under this subsection shall be credited against the debt for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property subject to levy on which a levy has been made who, on request by ASRS, surrenders the property or discharges the obligation to ASRS is discharged from any obligation or liability to the debtor with respect to the property arising from the surrender or payment.

D. ASRS may release a levy on all or part of property levied on. The release shall not operate to prevent any subsequent levy.

E. If ASRS determines that property has been wrongfully levied on, ASRS shall return the specific property levied on or an amount of money equal to the value of the property levied on.

F. For the purposes of this section:

1. "Levy" includes the power of distraint and seizure by any means.

2. "Person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, or any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property or to discharge the obligation.

#### 38-725. Financial institutions data match; prohibited disclosure; fee; definition

A. ASRS may enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist ASRS in the collection of monies owed. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. The data exchanges shall include the name, address of record, social security number and any other identifying information for each person who maintains an account at the institution and who owes money as identified by ASRS by name and social security number.

C. ASRS or its agent may disclose a debtor's financial record under this section only in order to enforce the collection of the money the debtor owes to ASRS.

D. ASRS may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

E. For the purposes of this section "financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

**38-727. Eligibility; options**

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this subsection.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. A person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days after employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

9. The following are ineligible for membership in ASRS:

(a) A person who performs services in a hospital, home or other institution as an inmate or patient at the hospital, home or other institution.

(b) A person who performs agricultural labor services, as defined in section 210 of the social security act.

(c) A person who is a nonresident alien temporarily residing in the United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are performed.

(d) A person who performs services for a school, college or university in this state at which the person is enrolled as a student, as defined by the employing institution. The employing institution

shall maintain an appeal process for a person who disagrees with the employing institution's determination that the person is a student and not eligible for membership in ASRS.

(e) A person who performs services under a program designed to relieve the person from unemployment.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. An elected official, as defined in section 38-831, who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability, if the elected official's employer is a participating employer under this article and the elected official is eligible for ASRS service credit for the elected official's service.

#### 38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amount equal to the present value required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan using the actuarial assumptions that are approved by the board. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

J. Notwithstanding any other law, an employee of a political subdivision who was previously a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that public employee retirement system for any period of employment is ineligible to receive service credit from ASRS for the same period of employment.

### 38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The transfer shall be made pursuant to section 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

#### **38-735. Payment of contributions: recovery of delinquent payments**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

#### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions; prepayment; definitions

A. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.

Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1. 401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38-712 or a section 115 trust.

2. ASRS shall determine the following options available to the employer:

(a) The amortization time periods.

(b) The frequency and dates that prepayments can be made.

(c) The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d) Any other options or obligations that the employer may have when entering into this written agreement.

3. The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4. The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38-718.
  5. 401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38-735.
  6. The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.
  7. ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.
  8. Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:
    - (a) In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
    - (b) After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
  9. After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.
  10. If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.
  11. Assets transferred in or out of or held in the ASRS trust fund established by section 38-712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.
  12. The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.
  13. If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax-exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.
- E. In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:
1. Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2. Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F. For the purposes of this section:

1. "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2. "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions.

### 38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit or, if the request is made within one year after the date of overpayment, shall return the contributions to the employer. ASRS may not pay an employer earnings attributable to the excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit. On receipt of an employer credit or return of contributions pursuant to this subsection, the employer shall return any member portion of the returned contributions to the member.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by

ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

E. Notwithstanding any other law, an employer may correct a contributions error pursuant to subsection B of this section by making payment adjustments through the employer's payroll reporting for the contributions that were not submitted if both of the following apply:

1. The adjustment is made within the same fiscal year that the contributions were due to ASRS.

2. The employer obtains written consent from the employee to make the adjustment to the employee's paycheck.

F. Notwithstanding any other law, if an employer pays less than the correct amount of employer or member contributions into ASRS, the correct amount of member contributions may not be paid to ASRS after the death of the member.

### 38-739. Credited service

- A. A member shall not earn more than one year of credited service in any fiscal year.
- B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.
- C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.
- D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.
- E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.
- F. The following years of service are excluded from credited service under this article:
  - 1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.
  - 2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

#### 38-739.01. Credited service retention

Consistent with the compliance statement issued by the United States internal revenue service, an employee who is employed with an ASRS employer in a position that was exempt from ASRS membership because the position was not included in agreements providing for the employee's coverage under the federal old-age and survivors insurance system but on whose behalf the employer has remitted ASRS contributions shall retain credited service for the period of employment for which the employer remitted ASRS contributions on the employee's behalf.

### 38-740. Return of contributions

- A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
  - 1. If the member has less than five years of credited service, ASRS shall disburse all of the member's contributions.
  - 2. If a member has five or more years of credited service, ASRS shall disburse the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738,

subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five percent.
- (b) 6.0 to 6.9 years of credited service, forty percent.
- (c) 7.0 to 7.9 years of credited service, fifty-five percent.
- (d) 8.0 to 8.9 years of credited service, seventy percent.
- (e) 9.0 to 9.9 years of credited service, eighty-five percent.
- (f) 10.0 or more years of credited service, one hundred percent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If ASRS has disbursed an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If ASRS disburses more than the amount due to a member or an alternate payee pursuant to this section, the person who received the overpayment shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

#### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, ASRS shall disburse benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

#### 38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

#### 38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is

derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

**38-744. Leave of absence: credit for leave without pay**

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

**38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
3. Volunteers or is ordered into active military service of the United States as part of a military call-up.
4. One of the following occurs:
  - (a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.
  - (b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

#### 38-746. Compensation limitation: adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

#### 38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) \$40,000 or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred percent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any

other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution from one or more:

- (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

- (b) Annuity contracts described in section 403(b) of the internal revenue code.

- (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

3. Accepting from a member a direct transfer from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code of an amount that would otherwise be eligible to be rolled over to ASRS under the provisions of section 408(d)(3)(A)(ii) of the internal revenue code if the amount had been received by the member and would have otherwise been includible in the member's gross income but for the direct transfer.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.
3. "Defined contribution plan" has the same meaning prescribed in section 38-769.
4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.
5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.
6. "Limitation year" has the same meaning prescribed in section 38-769.
7. "Participating employer" means an employer that participates in ASRS.
8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

**38-748. Employer payments for ineligible contributions; definitions**

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS shall provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

**38-749. Employer termination incentive program; employer payment of actuarial cost; definition**

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

### 38-750. Transfers out of the system

A. If an employee has made an irrevocable election pursuant to section 38-747, subsection B or D and transfers participation to another defined benefit retirement system or plan of this state without a termination of employment, within ninety days after the date of the transfer, ASRS shall transfer to the subsequent defined benefit retirement system or plan the amount the employee paid for the purchase of the credited service plus interest as determined by ASRS.

B. If the assets transferred from ASRS are less than the cost of the benefits accrued relative to the credited service as calculated pursuant to section 38-922, subsection B, paragraph 2, and unless a law otherwise provides, the employee shall elect either to pay the difference to the subsequent defined benefit retirement system or plan or accept a reduced amount of service credits. If the employee elects to pay the difference, the amount paid shall be added to the employee's accumulated contribution account balance. If the employee elects to accept a reduced amount of service credits, the amount of service credits granted shall be equal to the amount of service credits purchased multiplied by the ratio of the amount of assets transferred to the amount calculated pursuant to section 38-922, subsection B, paragraph 2.

C. The transferred employee and the employer shall complete the terms of the irrevocable election by making payments to ASRS.

D. If the employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, on termination of employment the employee shall elect to have ASRS:

1. Promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to elect to have the assets transferred within thirty days after termination of employment, the employee is deemed to have made an election as prescribed in paragraph 2.

2. On written request by the employee, promptly return to the employee the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If no application is received by ASRS within sixty days after termination of employment, ASRS shall issue the payment directly to the employee.

E. If the employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, after termination of employment the employee may elect within thirty days of termination of employment to have ASRS promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to make the election under this subsection, ASRS shall deem the employee as an inactive member of ASRS.

F. If an employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is

receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is eligible to transfer to the retirement system or plan, but the election to transfer terminates the benefit from ASRS on the effective date of the transfer.

G. If an employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is not eligible to transfer to another retirement system or plan.

**38-751. Nonparticipatory employer liability allocation; exemption; definitions**

A. ASRS shall establish a separate fund for an employer, other than a charter school, that is no longer participating in ASRS as a result of any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state, dissolves.
3. Through legislative action, the employer is no longer enrolling new employees in ASRS or no longer contributing to ASRS on behalf of current employees or groups of employees who otherwise would be eligible for ASRS membership.

B. For a nonparticipating employer described in subsection A of this section, ASRS shall allocate an actuarial accrued liability and a designated asset amount to the nonparticipating employer's separate fund as of the nonparticipation date, which shall be calculated as follows:

1. The actuarial accrued liability shall equal the sum of the plan employer actuarial accrued liability and the LTD program employer actuarial accrued liability. Actuarial accrued liability shall be calculated based on the same actuarial assumptions and methods as the actuarial valuation performed immediately preceding the nonparticipating employer's nonparticipation date.

2. The designated asset amount shall equal the sum of the following:

- (a) The plan employer actuarial accrued liability multiplied by the plan funded percentage.
- (b) The LTD program employer actuarial accrued liability multiplied by the LTD program funded percentage.

C. All monies and securities transferred to the nonparticipating employer's separate fund shall be credited to that fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes. ASRS shall make all decisions regarding the nonparticipating employer's separate fund.

D. After establishing the nonparticipating employer's separate fund, the fund shall be adjusted for all of the following:

1. All contributions made by employees of the nonparticipating employer.
2. All contributions made by the nonparticipating employer.

3. All plan, all LTD program and any other benefits paid to the nonparticipating employer's members who are active, inactive, retired or on long-term disability.

4. All plan, all LTD program and any other benefits paid to the survivors of the nonparticipating employer's members.

5. The applicable share of the investment gains and losses.

6. Expenses associated with the administration of the nonparticipating employer's separate fund, including any administrative, development, actuarial, legal, custodial and investment management costs associated with the fund. These expenses shall be paid directly by the nonparticipating employer or included in the employer's liability for the purposes of determining the employer's contribution rate.

E. After establishing the nonparticipating employer's separate fund, the nonparticipating employer and any employees of that employer who are enrolled in ASRS shall continue to have contribution requirements to the nonparticipating employer's separate fund. The contribution requirements shall be calculated as follows:

1. All employees of the nonparticipating employer who are enrolled in ASRS shall continue to make contributions through payroll deductions based on the contribution rate determined for the employees of participating employers of ASRS pursuant to section 38-736.

2. The nonparticipating employer shall continue to make contributions through lump sum payments in accordance with section 38-735, equal to the sum of:

(a) Contributions owed through payroll deductions based on the contribution rate determined for participating employers pursuant to section 38-737.

(b) The amount required to amortize the past service funding requirement in the nonparticipating employer's separate fund over a period that is determined by the board and that is consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the nonparticipating employer's separate fund is less than one hundred percent funded.

F. The ASRS actuary shall determine the actuarial assumptions used to determine the contribution requirements for the nonparticipating employer under subsection E of this section. Notwithstanding section 38-737, the contribution for the nonparticipating employer may not be determined as a percentage of compensation due to the anticipated decline of compensation for employees of the nonparticipating employer participating in ASRS. The nonparticipating employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS at a rate that is consistent with the rate paid by the participating employers. Each fiscal year, amounts that are not remitted through payroll contributions pursuant to this section shall be invoiced to the employer and shall be paid within the same fiscal year the nonparticipating employer is invoiced.

G. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

H. For the purposes of calculating an employer's liability under this section, members who are active, inactive, retired or on long-term disability are considered employees of the nonparticipating employer

if the member's most recent employer was the nonparticipating employer as of the nonparticipation date.

I. This section does not apply to an employer whose existence was terminated by legislative action or otherwise became a nonparticipating employer as described in subsection A of this section on or before January 1, 2013.

J. For the purposes of this section:

1. "LTD program" means the program established by article 2.1 of this chapter.

2. "LTD program employer actuarial accrued liability" means the actuarial accrued liability for the employer's active and inactive members and the open LTD program claims for the employees of the employer as of the nonparticipation date.

3. "LTD program funded percentage" means the total market value of LTD program assets divided by the total LTD program actuarial accrued liabilities, as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the LTD program funded percentage is one hundred percent.

4. "Nonparticipation date" means the date on which the employer is no longer participating in ASRS.

5. "Plan" means the retirement plan established by this article.

6. "Plan employer actuarial accrued liability" means the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for the employer's active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date.

7. "Plan funded percentage" means the plan's total market value of assets divided by the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for all active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the plan funded percentage is one hundred percent.

**38-755. Member's account information: beneficiary designation: spousal consent: confidentiality**

A. ASRS shall make information concerning a member's account accessible to the member in written or electronic form. This information shall include the member's current account balance, contact information, beneficiary election, estimated retirement date and estimated benefit amount.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty percent of the member's account, unless naming or maintaining the current spouse as a beneficiary violates another law, an existing contract or a court order. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. In order to protect a member's identity from fraud, abuse, theft or civil or criminal activity, information about a member is not subject to inspection pursuant to title 39, chapter 1, article 2, except that the following information about a member is subject to inspection:

1. The member's name.
2. Whether the member is an active member as defined in section 38-711, an inactive member as defined in section 38-711 or a retired member as defined in section 38-711.
3. The member's current or most recent employer.
4. For a retired member, the average monthly compensation, as defined in section 38-711, used to calculate the member's retirement benefit.
5. The credited service as defined in section 38-711 on account for an active or inactive member or the credited service used to calculate the retirement benefit for a retired member.
6. The gross pension amount actually paid to a retired member.
7. The most recent retirement date.
8. The current account balance for an active or inactive member.
9. The gross long-term disability program benefit actually paid to a member with a disability pursuant to article 2.1 of this chapter.
10. The amount paid to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
11. The amount of credited service purchased pursuant to section 38-743, 38-744 or 38-745.

E. ASRS shall not permit any unredacted record to be inspected that contains a member's social security number, bank account information, address, telephone number, e-mail address, medical records, health insurance information, beneficiary or survivor information or disability information or any information that is protected by any federal or state law.

**38-756. [Outreach education program](#)**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.
7. The development of a creative promotional program using available media outlets.

C. ASRS shall present, either in person or through the use of electronic means, the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

### 38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. Except as provided in section 13-713, a member's right to the member's normal retirement benefit as described in subsection B of this section is nonforfeitable by an employer or ASRS on attainment of the member's normal retirement date.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a straight life annuity that equals the result of paragraph 1 of this subsection multiplied by paragraph 2 of this subsection when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 percent if the member does not have more than 19.99 years of credited service.

(b) 2.15 percent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 percent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 percent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

### 38-758. Early retirement

A. A member who has attained age fifty, who has terminated employment with all employers and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. For a member whose membership in ASRS commenced before July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three percent for each unit of one or fraction of one by which the sum is less than eighty.

C. For a member whose membership in ASRS commenced on or after July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 at the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this subsection for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixty-second birthday if the member has at least ten years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

#### 38-759. Late retirement; definition

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the member's required beginning date.

C. For the purposes of this section, "required beginning date" has the same meaning prescribed in section 38-775.

#### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor life annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's

effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the life annuity of the member under the same joint and survivor life annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted life annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor life annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor life annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

#### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection E.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

#### **38-763. Survivor benefits after retirement**

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits distributed by ASRS. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

#### **38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. All retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. Except as provided in subsection D of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement

benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

D. The board may pay the entire retirement benefit in a lump sum pursuant to subsection C of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

E. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783 but is not eligible for a benefit increase pursuant to section 38-767.

F. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

G. Notwithstanding subsection H of this section, a member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

H. A member may elect to make changes to a retirement application before the member's retirement date. A member may exercise a onetime election to make changes to the retirement application within sixty days after the member's retirement date. The member may not change the member's retirement date, and any changes made to the retirement application are retroactive to the member's retirement date.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

#### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### **38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.
2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A retired member whose retirement benefits have been suspended pursuant to subsection A of this section shall repay ASRS any retirement benefits received by the member from the date ASRS notifies the member in writing that the member's employment resulted in active membership in ASRS pursuant to subsection A of this section, from the date ASRS determines that the member knew or should have known that the member's employment resulted in membership in ASRS pursuant to subsection A of this section or for any other period that approximates the duration of the violation, as determined by ASRS.

C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

- (a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

- (b) Allows a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

E. A retired member who returns to work pursuant to subsection D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. An employer that engaged the retired member to work pursuant to this section shall pay to ASRS an amount equal to the rate established by the actuary pursuant to section 38-766.02, subsection B for the period starting with the first day the retired member began working after retirement through the earlier of:

1. The date the member terminates employment.
2. The date the member resumes active membership pursuant to subsection A of this section and the member and employer are required to make contributions pursuant to section 38-736, 38-737 or 38-738.

**38-766.01. Retired members; return to work**

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated direct employment with an employer at least three hundred sixty-five consecutive days before returning to work.
3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. Notwithstanding section 38-766 and subsection A of this section, at a retired member's election, a retired member may return to work as a state elected official who is subject to term limits and still be eligible to receive retirement benefits.

C. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

D. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days after returning to work.

E. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

F. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

**38-766.02. Retired members; return to work; employer contribution payments; exception; definitions**

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work with an ASRS employer in any capacity in a position ordinarily filled by an employee of the employer or in a position that is similar in duties and responsibilities to that of a position ordinarily filled by an employee of the employer. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two percent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. An employer is not required to pay contributions at an alternate contribution rate on behalf of a retired member under subsection A of this section if the retired member returns to work with the employer in a position that is currently filled by an employee of the employer who is an active member and for which the employer is currently required to pay and is paying contributions on behalf of the active member in that same position pursuant to sections 38-736 and 38-737. An employer may pay contributions at an alternate contribution rate for a retired member who meets the requirements for an exemption under this subsection.

G. For contributions made pursuant to subsection F of this section beginning July 1, 2019, if ASRS and the employer determine that the alternate contribution rate does not apply to a retired member who returns to work for whom the employer has paid contributions at the alternate contribution rate,

the employer may request an employer credit, not including interest, for those contributions within ninety days after the end of the fiscal year in which the contributions were paid. If ASRS determines that an employer credit is not feasible, ASRS shall issue a refund to an employer in a form determined by ASRS.

H. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten percent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

**38-767. Benefit increases: applicability**

A. For a member whose membership commenced before the effective date of this amendment to this section, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which

an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.
3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member who was eligible for an annual benefit increase pursuant to subsection A of this section had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.
2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.
3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined

contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

#### **38-768. Minimum retirement benefit**

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members, is \$600.
2. For beneficiaries, is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection C is not eligible for a minimum benefit as provided by this section.

#### **38-769. Maximum retirement benefits; termination; definitions**

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In

addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an

employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

### 38-770. [Eligible rollover distribution: definitions](#)

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections allowed in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D,

paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) Beginning January 1, 2008, a Roth individual retirement account described in section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account that satisfies the requirements of section 408(p) of the internal revenue code.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

**38-771. Benefit options for transferred defined contribution program members: definitions**

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by

section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.

3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747,

subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747,

subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.
2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.
3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.
4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this

section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:

1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.
5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.
6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.
7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.
8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

**38-772. Prior service under defined contribution program administered by ASRS; definitions**

- A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.
- B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.
- C. For the purposes of this section:

1. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.
2. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

**38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions**

- A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of the board's acceptance of the domestic relations order, and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall:

1. Not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.
2. Value the member's benefit on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.
2. The name and last known mailing address of each alternate payee who is covered by the order.
3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.
4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.
2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.
2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. If an alternate payee predeceases the member, amounts payable to the alternate payee cease on the death of the alternate payee. ASRS shall cause the amount formerly payable to the alternate payee to revert to the member.

H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

#### 38-774. Excess benefit arrangement

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

### 38-775. Required distributions: definitions

A. This section applies for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006. In applying the requirements of this section, the following operational provisions govern:

1. Except as provided in the following sentence, the requirements of this section take precedence over any inconsistent provisions of this article and article 2.1 of this chapter. The rules of this section shall not restrict any form, calculation, adjustment or payment of benefit provided under this article in effect on April 17, 2002, if the form, calculation, adjustment or payment of benefit satisfied section 401(a)(9) of the internal revenue code based on a reasonable and good faith interpretation of that section.

2. All distributions required under this section shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

3. Notwithstanding this section, other than paragraph 2 of this subsection, distributions may be made under a designation made before January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal responsibility act of 1982 (P.L. 97-248) and the provisions of this article that relate to that section.

B. The member's entire interest shall be distributed, or begin to be distributed, to the member not later than the member's required beginning date.

C. If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, not later than as follows:

1. If the member's surviving spouse is the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained seventy-two years of age, if later.

2. If the member's surviving spouse is not the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. For purposes of this subsection and subsection G of this section, distributions are considered to begin on the member's required beginning date or the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection, the date distributions are considered to begin is the date distributions actually commence.

4. If the member dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date prescribed in paragraph 1 or 2 of this subsection as long as the member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the member's death. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the member or the surviving spouse begin, this paragraph applies as if the surviving spouse were the member.

D. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made pursuant to subsections E, F and G of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions shall be made pursuant to the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the internal revenue code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury that apply to individual accounts.

E. The following provisions govern the determination of the amount to be distributed each calendar year:

1. If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year.

(b) The distribution period shall be over a life or lives or over a period certain not longer than the period described in subsection F or G of this section.

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum allowed.

(d) Payments shall either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics.

(ii) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit on death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection F of this section dies or is no longer the member's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the internal revenue code.

(iii) To provide cash refunds of employee contributions on the member's death.

(iv) To pay increased benefits that result from a plan amendment.

2. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection C, paragraph 1 or 2 of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bimonthly, monthly, semiannually or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

3. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

F. The following provisions govern annuity distributions that commence during a member's lifetime:

1. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in question and answer number 2 of section 1.401(a)(9)-6 of the regulations issued by the United States secretary of the treasury. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence applies to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches seventy years of age, the applicable distribution period for the member is the distribution period for seventy years of age under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury plus the excess of seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

G. The following provisions govern minimum distributions if a member dies before the date distributions begin:

1. Except as provided in subsection C, paragraph 4 of this section, if the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning not later than the time prescribed in subsection C, paragraph 1 or 2 of this section, over the life of the designated beneficiary or over a period certain not exceeding either of the following:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies before distributions to the surviving spouse begin, this subsection applies as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection C, paragraph 1 of this section.

H. If a member dies after the member's required beginning date and the member had not commenced distribution of retirement benefits, ASRS shall treat the member as having commenced distribution of retirement benefits on the member's required beginning date. Notwithstanding section 38-776, ASRS shall determine the member's retirement benefit as a straight annuity as of the date of the member's required beginning date. The member's estate is entitled to the member's benefit payments and any remaining member contributions on account shall be disbursed pursuant to section 38-763.

I. For the purposes of this section:

1. "Designated beneficiary" means the individual who is designated as the member's beneficiary to receive benefits under this article and is the designated beneficiary under section 401(a)(9) of the internal revenue code and question and answer number 1 of section 1.401(a)(9)-4 of the regulations issued by the United States secretary of the treasury.

2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection C of this section.

3. "Life expectancy" means life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury.

4. "Required beginning date" means the date payment of a member's benefits shall commence in accordance with section 401(a)(9)(C) of the internal revenue code.

### 38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, an existing contract or a court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

38-781. Supplemental employee deferral plan; public employees; administration; immunity; definitions

A. One or more supplemental employee deferral plans may be established pursuant to this section to provide public employees an opportunity to save additional tax-deferred monies for retirement.

B. ASRS may establish, administer, manage and operate supplemental employee deferral plans for employers.

C. ASRS may:

1. Employ services it deems necessary, including legal services, for the operation and administration of the plans.

2. Administer the plans through contracts with multiple vendors.

3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plans.

4. For the purposes of this section, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

D. A supplemental employee deferral plan does not replace an employee's existing state defined benefit retirement plan.

E. If an employer, including this state, elects to participate in a supplemental employee deferral plan, any employee of the employer who meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan may participate in the supplemental employee deferral plan.

F. Notwithstanding subsection E of this section, on or after July 1, 2022, an employee of an employer who is not eligible to participate in a public retirement system established by article 3, 3.1, 4, 4.1 or 6 of this chapter may elect to participate in a supplemental employee deferral plan if the employee meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan.

G. Employee participation in a supplemental employee deferral plan requires the participant's employer to make salary reductions from the participant's compensation at no cost to the employee, ASRS or any vendor retained by ASRS and contribute such salary reductions to the plan. An employer may make employer contributions to the supplemental employee deferral plan if the plan allows. The employer shall submit any reports required by the plan. If the participant is an active member, any compensation deferred by an employee under a plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits provided in this article earned by any employee participating in the plan.

H. Employee contributions and earnings on employee contributions are immediately vested. Employer contributions, if any, and the earnings on employer contributions shall vest according to the schedule established by the employer, if the employer completes and submits a schedule to ASRS. If the employer does not complete and submit a schedule to ASRS, employer contributions, if any, and the earnings on employer contributions shall vest according to the default schedule established by ASRS.

I. Notwithstanding any other law, this state and its officers and employees, the board and ASRS are immune from civil liability and are not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury arising out of the supplemental employee deferral plan.

J. A political subdivision or a political subdivision entity that is not participating in ASRS may elect to allow its employees to participate in a supplemental employee deferral plan that is overseen by ASRS pursuant to this section by entering into an agreement with ASRS. A political subdivision or political subdivision entity that elects to allow its employees to participate in a supplemental employee deferral plan pursuant to this subsection:

1. Is not an employer for the purposes of this article and its employees are not members for the purposes of this article.

2. May not provide any information indicating or implying that the political subdivision or political subdivision entity offers any ASRS benefits other than participation in a supplemental employee deferral plan pursuant to this subsection. A political subdivision or political subdivision entity that violates this paragraph may not elect to allow new employees to participate in a supplemental employee deferral plan pursuant to this subsection until the violation is corrected at the discretion of ASRS.

3. May elect to join ASRS pursuant to section 38-729.

K. For the purposes of this section:

1. "State" means this state, including any department, office, board, commission, agency or university, but does not mean any school district or community college district.

2. "Supplemental employee deferral plan" means a tax deferred annuity described in section 403(b) of the internal revenue code, including a custodial account described in 403(b)(7) of the internal revenue code, and an eligible deferred compensation plan described in section 457(b) of the internal revenue code. A supplemental employee deferral plan shall comply with all applicable provisions of the section of the internal revenue code under which such plan is adopted and maintained.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not

use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to

subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement

system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their

provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

[38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions](#)

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if

the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

(b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement

increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 38-791. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 8-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

### 38-793. Violation: classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

### 38-794. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

### 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member

develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

#### 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

#### 38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

#### 38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

#### 38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

#### 38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

#### 38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines

pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it

includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

#### 38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### 38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

#### 38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

#### 38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

#### 38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing or has contributed.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

### **38-922. [Transfer or redemption of service credits](#)**

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

[38-923. Transfer of service credits between municipal retirement systems and special retirement plans: definitions](#)

A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system

or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

C. An active or inactive member of a retirement system or plan of a municipality of this state or of the elected officials' retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

D. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.

2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the retirement system or plan.

(c) Is not currently making contributions to the retirement system or plan.

(d) Has not withdrawn contributions from the retirement system or plan.

3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

#### 38-924. Transfer of service credits

A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:

1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.

2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.

C. If a member decides to transfer:

1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.

D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

**C-11**

**ARIZONA STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-125



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 13, 2024

**SUBJECT: STATE RETIREMENT SYSTEM BOARD**  
Title 2, Chapter 8

**Amend:** R2-8-125

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### **Summary:**

This regular rulemaking from the Arizona State Retirement System Board (ASRS) seeks to amend one (1) rule in Title 2, Chapter 8, Article 1 related to Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations. Specifically, the ASRS seeks to amend its rules relating to a termination incentive program to clarify how the ASRS identifies and calculates an unfunded liability resulting from a termination incentive program.

The ASRS indicates this rulemaking will clarify how an unfunded liability is determined and calculated, thereby increasing understandability of when an employer may be invoiced for such liability. The ASRS indicates clarifying how unfunded liabilities are calculated and invoiced will ensure that they are processed more efficiently. The ASRS indicates these rules will increase the clarity and effectiveness of the termination incentive program requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS processes unfunded liabilities resulting from termination incentive programs.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The ASRS indicates it did not review any study relevant to this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The rule clarifies how the ASRS identifies and calculates an unfunded liability resulting from a termination incentive program. The ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, except for some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS processes unfunded liabilities caused by termination incentive programs.

6. **What are the economic impacts on stakeholders?**

Stakeholders include all ASRS members and ASRS employers. The economic impact of the rule will be minimal because it only clarifies current statutory requirements and processes. There will be no economic impact on small businesses, private or public employment, or state agencies.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The ASRS indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

**8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The ASRS indicates it received no public comments related to this rulemaking and no one attended the oral proceeding held on September 5, 2023.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The ASRS indicates the proposed amended rules do not require issuance of a permit.

**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The ASRS indicates there is no federal law applicable to these rules.

**11. Conclusion**

This regular rulemaking from the ASRS seeks to amend one (1) rule in Title 2, Chapter 8, Article 1 related to Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations. Specifically, the ASRS seeks to amend its rules relating to a termination incentive program to clarify how the ASRS identifies and calculates an unfunded liability resulting from a termination incentive program.

The ASRS is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 8, 2024

Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System Board**

Dear Ms. Sornsin:

The attached final rule package regarding termination incentive programs is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 18, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Chief Strategy Officer;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Katie Daigneault  
Chief Strategy Officer



**state:**

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies current statutory requirements and processes.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on September 5, 2023.

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

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 1. RETIREMENT SYSTEM**

Section

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

**ARTICLE 1. RETIREMENT SYSTEM**

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

A. The following definitions apply to this Section unless otherwise specified:

1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
2. "Baseline salary" means the average of a member's ~~Average Monthly~~ monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
  - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
  - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
3. "Compensation" means the same as in A.R.S. § 38-711(7).
4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:

- a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
  7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
  8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation ~~for each consecutive 12 months of Compensation~~ used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).

- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use ~~a determination~~ the calculation under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

#### 1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to a termination incentive program in order to clarify how the ASRS identifies and calculates an unfunded liability resulting from a termination incentive program.

##### a. The conduct and its frequency of occurrence that the rule is designed to change:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. An employer may be responsible for paying an unfunded liability that is created by an employer's termination incentive program where an employee retiring with a higher benefit than they otherwise would have, based on an increase in the member's compensation that is not attributed to a promotion.

##### b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Without this rulemaking, employers will not have an adequate understanding of how an unfunded liability may occur and how the ASRS may invoice the employer for such a liability. Notice of such information is necessary in order to ensure that employers have adequate understanding of how they may be responsible for an unfunded liability resulting from a termination incentive program. By promulgating these rules, employers will have a better understanding of when they may be invoiced for an unfunded liability cause by their termination incentive program. Increasing understanding of such

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

liabilities will increase the employer's understanding of how the ASRS manages the termination incentive program liabilities and reduce confusion, which will reduce burden on the public.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

This rulemaking will clarify how an unfunded liability is determined and calculated, thereby increasing understandability of when an employer may be invoiced for such liability. Clarifying how unfunded liabilities are calculated and invoiced will ensure that they are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the termination incentive program requirements, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how the ASRS processes unfunded liabilities resulting from termination incentive programs.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies current statutory requirements and processes.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 652,864 and 664 employers.

5. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

a. Identification of the small business subject to the rulemaking:

No businesses, regardless of size, are subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

Not applicable.

c. Description of methods that may be used to reduce the impact on small businesses:

Not applicable.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

All ASRS retirees are directly affected by the rulemaking. The effect has been previously described above.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The ASRS believes this is the least costly and least intrusive method because it will clarify how ASRS processes unfunded liabilities caused by termination incentive programs.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
 April 1, 2023 through June 30, 2023

*Section R2-8-301 numbering corrected and subsection reference under the “Estimated Social Security disability income amount” definition corrected. No other changes have been made to this Chapter since Supp. 22-3 (Supp. 23-2).*

**Questions about these rules? Contact:**

Board: Arizona State Retirement System  
 Address: 3300 N. Central Ave., Suite 1400  
 Phoenix, AZ 85012-0250  
[Website: https://www.azasrs.gov](https://www.azasrs.gov)  
 Name: Jessica A.R. Thomas, Rules Writer  
 Telephone: (602) 240-2039  
[Email: Ruleswriter@azasrs.gov](mailto:Ruleswriter@azasrs.gov)

**PREFACE**

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
 ADMINISTRATIVE RULES DIVISION

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**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

**RULE HISTORY**

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

**AUTHENTICATION OF PDF CODE CHAPTERS**

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

**HOW TO USE THE CODE**

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

**ARIZONA REVISED STATUTE REFERENCES**

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

**RULES**

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

**PERSONAL USE/COMMERCIAL USE**

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

**TITLE 2. ADMINISTRATION**

**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

Authority: A.R.S. § 38-711 et seq.

**Supp. 23-2**

**CHAPTER TABLE OF CONTENTS**

**ARTICLE 1. RETIREMENT SYSTEM**

Section		
R2-8-101.	Repealed .....	4
R2-8-102.	Repealed .....	4
R2-8-103.	Repealed .....	4
R2-8-104.	Definitions .....	4
R2-8-105.	Repealed .....	5
R2-8-106.	Reserved .....	5
R2-8-107.	Reserved .....	5
R2-8-108.	Reserved .....	5
R2-8-109.	Reserved .....	5
R2-8-110.	Reserved .....	5
R2-8-111.	Reserved .....	5
R2-8-112.	Reserved .....	5
R2-8-113.	Emergency Expired 5	
R2-8-114.	Emergency Expired .....	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement .....	7
R2-8-118.	Application of Interest Rates .....	8
R2-8-119.	Expired .....	8
R2-8-120.	Repealed .....	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions .....	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	9
Table 1.	Expired .....	9
Table 2.	Expired .....	9
Table 3.	Repealed .....	9
Table 3A.	Expired 10	
Table 3B.	Expired .....	10
Table 4.	Expired 10	

Table 4A.	Repealed .....	10	
Table 4B.	Repealed .....	10	
Table 4C.	Repealed .....	10	
Table 5.	Expired		
	10		
Table 6.	Expired		
	10		
Table 7.	Expired		
	11		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		11
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application		
	12		
R2-8-127.	Re-Retirement Application		
	15		
R2-8-128.	Joint and Survivor Retirement Benefit Options		
	16		
R2-8-129.	Period Certain and Life Annuity Retirement Options		
	.....	16	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant		
	.....	16	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation		
	.....	18	
R2-8-132.	Survivor Benefit Options		
	19		
R2-8-133.	Survivor Benefit Applications .....	20	
Table 1.	Repealed .....	22	
Table 2.	Repealed .....	22	
Table 3.	Repealed .....	22	
Table 4.	Repealed .....	22	
Table 5.	Repealed .....	22	
Table 6.	Repealed .....	23	
Table 7.	Repealed .....	23	
Table 8.	Repealed .....	23	
Table 9.	Repealed .....	23	
Table 10.	Repealed .....	23	
Table 11.	Repealed .....	23	
Exhibit A.	Repealed .....	23	
Exhibit C.	Repealed .....	23	
Exhibit G.	Repealed .....	25	
Exhibit H.	Repealed .....	25	
Exhibit I.	Repealed .....	26	
Exhibit J.	Repealed .....	26	
Exhibit K.	Repealed .....	26	

## ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)*

*(Supp. 17-2).*

*Article 2,*

*consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section			
R2-8-201.	Definitions .....	27	
R2-8-202.	Premium Benefit Eligibility and Benefit Determination		28
R2-8-203.	Payment of Premium Benefit .....	28	
R2-8-204.	Premium Benefit Calculation .....	29	
R2-8-205.	Premium Benefit Documentation .....	29	
R2-8-206.	Six-Month Reimbursement Program .....	29	
R2-8-207.	Optional Premium Benefit .....	30	

## ARTICLE 3. LONG-TERM DISABILITY

*Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).*

Section			
R2-8-301.	Definitions .....	31	
R2-8-302.	Application for Long-Term Disability Benefit .	31	
R2-8-303.	Long-Term Disability Calculation .....	31	
R2-8-304.	Payment of Long-Term Disability Benefit ...	32	
R2-8-305.	Social Security Disability Appeal .....	32	
R2-8-306.	Approval of Social Security Disability .....	32	

## ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	
	32	
R2-8-402.	General Procedures	
	32	
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	32
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	
	.....	33
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	33

**ARTICLE 5. PURCHASING SERVICE CREDIT**

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	
	34	
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	35
R2-8-503.	Requirements Applicable to All Service Credit Purchases	36
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	
	.....	36
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	36
R2-8-506.	Cost Calculation for Purchasing Service Credit	36
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	36
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	
	.....	37
R2-8-509.	Required Documentation and Calculations for Military Service Credit	
	.....	37
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	
	.....	38
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	
	.....	39
R2-8-512.	Purchasing Service Credit by Check, Cashier’s Check, or Money Order	
	.....	39
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	
	39	
R2-8-513.01.	Irrevocable PDA and Transfer of Employment to a Different Employer	
	.....	41
R2-8-513.02.	Termination Date	
	41	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	.....	41
R2-8-515.	Repealed .....	42
R2-8-516.	Expired .....	42
R2-8-517.	Expired .....	42
R2-8-518.	Repealed .....	42
R2-8-519.	Purchasing Service Credit by Termination Pay	
	43	
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	.....	43
R2-8-521.	Adjustment of Errors	
	44	

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	44	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	.....	44
R2-8-603.	Petition for Rulemaking	
	44	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	.....	44
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	.....	44
R2-8-606.	Oral Proceedings	
	45	
R2-8-607.	Petition for Delayed Effective Date	
	45	

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section

R2-8-701.	Definitions	
	45	
R2-8-702.	General Information	
	45	
R2-8-703.	Employer’s Discovery of Error	
	46	
R2-8-704.	Member’s Discovery of Error	
	46	
R2-8-705.	ASRS’ Discovery of Error	
	46	
R2-8-706.	Determination of Contributions Not Withheld	
	46	
R2-8-707.	Submission of Payment	
	47	
R2-8-708.	Expired .....	47
R2-8-709.	Repealed .....	47

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section

R2-8-801.	Definitions .....	47
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	47
R2-8-803.	Reimbursement of Overpayments	
	48	
R2-8-804.	Collection of Overpayments from Forfeiture	
	48	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	48
R2-8-806.	Collection of Overpayments from Survivor Benefit	
	.....	49
R2-8-807.	Collection of Overpayments from LTD Benefit	
	49	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	49
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	49
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	49

**ARTICLE 9. COMPENSATION**

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section

R2-8-901.	Definitions .....	49
R2-8-902.	Remitting Contributions .....	49
R2-8-903.	Accrual of Credited Service .....	50
R2-8-904.	Compensation from An Additional Employer .	50
R2-8-905.	Expired .....	50

**ARTICLE 10. MEMBERSHIP**

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section

R2-8-1001.	Definitions	
	50	
R2-8-1002.	Employee Membership	
	50	
R2-8-1003.	Charter School Employer Membership .....	51
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	.....	52
R2-8-1005.	Employer Reporting	

R2-8-1006.	53	Prior Service Purchase Cost for New Employers
53		

**ARTICLE 11. TRANSFER OF SERVICE CREDIT**

Section		
R2-8-1101.	Definitions	
	54	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	54
R2-8-1103.	Transferring Service to Other Retirement Plans	
	.....	55

## ARTICLE 1. RETIREMENT SYSTEM

### R2-8-101. Repealed

#### Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-102. Repealed

#### Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-103. Repealed

#### Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

### R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
  - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
  - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
  - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
  - a. The requirements of A.R.S. § 38-773(C);
  - b. The date of the member and alternate payee's marriage;
  - c. The date of divorce or the date in which the community property interest ended;
  - d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
  - e. How the member's ASRS benefits should be split in specific amounts for the following possible events:
    - i. The member's retirement;
    - ii. Return of contributions and termination of membership according to R2-8-115; and
    - iii. The death of the member prior to retirement;
  - f. Whether the member may transfer all ASRS service credit to another retirement system;
  - g. Whether the member is required to maintain the alternate payee as the member's beneficiary;
  - h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
  - i. The judge's dated signature.
10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended

by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death**

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
  - c. Is not currently in a leave of absence status with an Employer;
  - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
  - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
  - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
  - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
  - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

- j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
  - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
  - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
  - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
- a. The type of eligible retirement plan; and
  - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
- 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  - 6. The Employer's name and telephone number;
  - 7. The Employer Number;
  - 8. The name and title of the authorized Employer representative;
  - 9. Certification by the authorized Employer representative that:
    - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
    - b. There is no agreement to re-employ the member;
    - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

#### **Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-116. Alternate Contribution Rate**

- A. For purposes of this Section, the following definitions apply:
- 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  - 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  - 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  - 4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:

1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
  2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of Commencing Employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.
- J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest	Assumed Actuarial Investment	Interest Rate Used to Determine Return of Contributions Upon
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Rate Change	Earnings Rate	Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
  4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

**R2-8-119. Expired**

**Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice**

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

**R2-8-122. Remittance of Contributions**

- A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.
- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

#### **Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

#### **R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
  1. The interest and investment return rate assumptions are determined by the Board.
  2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

#### **Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

#### **Table 1. Expired**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### **Table 2. Expired**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### **Table 3. Repealed**

#### **Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614,

effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired**

**Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed**

**Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former

Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3).

Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
  2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and

- b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
- 3. "Compensation" means the same as in A.R.S. § 38-711(7).
- 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
- 5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
  - a. A change in the employee's primary job responsibilities; and
  - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
  - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
- 6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
- 7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
- 8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
  - 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  - 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

#### **Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

#### **R2-8-126. Retirement Application**

- A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
  - 1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
  - 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  - 3. "Applicable retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or
    - b. The date a member re-retires from the ASRS after returning to active membership.
  - 4. "Conservator" means the same as in A.R.S. § 14-7651.
  - 5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  - 6. "Legal documentation" means:
    - a. One document issued from a United States government entity; or
    - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
  - 7. "LTD" means the same as in R2-8-301.
  - 8. "Irrevocable PDA" means the same as in R2-8-501.
  - 9. "On File" means the same as in R2-8-115.
  - 10. "Original retirement date" means the later of:
    - a. The date a member retires from the ASRS for the first time; or

- b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. The member's current mailing address; if not On File with ASRS;
  5. The member's date of birth, if not On File with ASRS;
  6. A retirement date according to A.R.S. § 38-764(A);
  7. The retirement option the member is electing;
  8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
    - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
    - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
  9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
    - a. The beneficiary's full name;
    - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
    - c. The beneficiary's date of birth;
    - d. The beneficiary's relationship to the member; and
    - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
  10. Whether the member is electing the Optional Health Insurance Premium Benefit;
  11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
    - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
    - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member's spouse's full name; and
    - d. The member's spouse's notarized signature;
  12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
    - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
    - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
    - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
    - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
  13. Acknowledgement of the following statements of understanding:
    - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
    - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
    - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      - i. The date ASRS receives the most recent Acceptable Documentation; or
      - ii. The retirement date contained in the most recent Acceptable Documentation.
    - d. The member has received the Special Tax Notice Regarding Plan Payments;
    - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
    - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
    - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
    - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
  14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
  1. The type of account and account number to which the member is electing to roll over;
  2. The name and address of the financial institution of the account to which the member is electing to roll over; and
  3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
  - 1. The number of the service purchase invoice;
  - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
  - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
    - a. The amount of the partial lump sum distribution to be applied to that invoice; or
    - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
  - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
  - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  - 2. The member's total salary paid during their last fiscal year;
  - 3. The member's compensation for the last pay period;
  - 4. The name and title of the authorized Employer representative;
  - 5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
  - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
  - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
  - 1. The member's full name;
  - 2. The member's bank account routing number;
  - 3. The member's bank account number; and
  - 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

#### **Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D)

effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-127. Re-Retirement Application**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  3. The information identified in R2-8-126(B)(11);
  4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
  6. Acknowledgement of the following statements of understanding:
    - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
    - b. The member understands that as a re- retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
    - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
    - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
    - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
    - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
    - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
    - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
  7. The member's notarized signature.
- C.** If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

#### **R2-8-128. Joint and Survivor Retirement Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C.** A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E.** For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F.** Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-129. Period Certain and Life Annuity Retirement Options**

- A.** The definitions in R2-8-126 apply to this Section.

- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
  1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The member's marital status, if not On File with ASRS;
  4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
  5. The member's notarized signature acknowledging the following statements of understanding:
    - a. For rescinding a retirement election:
      - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
    - b. For changing a contingent annuitant or beneficiary:
      - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
    - c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
- a. Full name;
  - b. Social Security number, if the contingent annuitant is a U.S. citizen;
  - c. Date of birth; and
  - d. Legal relationship to the member.
7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
- a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
8. Whether the spouse's consent is not required because:
- a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.
- Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

- A. The definitions in R2-8-126 apply to this Section.
- B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
- 1. The Member's full name and one or more of the following information:
    - a. The Member's Social Security number or U.S. Tax Identification number; or
    - b. The Member's address; or
    - c. The Member's date of birth;
  - 2. The following information for the beneficiary:
    - a. The full name of the person or entity the member is designating as beneficiary;
    - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
    - c. The percentage of the benefit the member is allocating to the beneficiary; and
  - 3. The member's notarized signature.
- C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E. Effective July 1, 2013, a married member:
- 1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary;
  - 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate contingent annuitant; or
    - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
- 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
  - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
  2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
    - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
    - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
  2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's assertion to the spouse's right to community property;
  4. An original or copy of the marriage certificate; and
  5. An original or certified copy of the member's death certificate.
- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** A DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
  2. Member's Social Security number or U.S. Tax Identification number;
  3. Whether the member's spouse is consenting to one or more of the following:
    - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
    - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
    - c. The member naming a contingent annuitant other than the spouse; and
    - d. The spouse's notarized signature.
- T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The spouse's full name;
  4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

#### **Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

#### **R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this Section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
  2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
  2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
  3. Address; and
  4. Notarized signature acknowledging the following statements:
    - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
    - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
    - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
    - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
    - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**R2-8-133. Survivor Benefit Applications**

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
  1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
  2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
  3. A certified copy of the court order of appointment as administrator, if applicable; and
  4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number or U.S. Tax Identification number,
    - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
      - i. The claimant's full name;
      - ii. The name of the institution to which the claimant is electing to roll over;
      - iii. The address of the institution to which the claimant is electing to roll over;
      - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
      - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - i. Whether the bank account is a checking or savings account;
      - ii. The name of the banking institution to which the benefit is being sent;
      - iii. The routing number;
      - iv. The account number; and
    - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
      - i. Full name;
      - ii. Mailing address, if not On File with ASRS;
      - iii. Date of birth, if applicable; and
      - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    - g. The following statements of understanding:
      - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
      - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
      - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
      - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
        - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
        - (2) They are not subject to backup withholding because:
          - (a) They are exempt from backup withholding, or
          - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
          - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
          - (3) They are a legal resident of the United States, unless they are an estate or trust.
        - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
        - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan

- will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
  - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
  - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
  - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
    - i. Full name;
    - ii. Social Security number or U.S. Tax Identification number;
    - iii. Date of death; and
  - b. The following information for the beneficiary:
    - i. Legal relationship to the member;
    - ii. Full name;
    - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
    - iv. Mailing address, if not On File with ASRS;
    - v. Date of birth, if not On File with ASRS;
    - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
      - (1) Whether the bank account is a checking or savings account;
      - (2) The name of the banking institution to which the benefit is being sent;
      - (3) The routing number;
      - (4) The account number; and
  - c. The following statements of understanding:
    - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
    - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
    - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
  - d. The contingent annuitant's notarized signature.
- E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
    - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
    - c. The claimant is the successor of the member and is entitled to the member's personal property because:
      - i. The claimant is named in the member's will; or
      - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
    - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
    - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
    - f. If there are other surviving heirs, then the name and relationship of each surviving heir;

- g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
  - h. The claimant's notarized signature.
- J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
  2. The member's Social Security number or U.S. Tax Identification number;
  3. The minor beneficiary's full name;
  4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
  5. The full name of the minor beneficiary's legal guardian;
  6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
  7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

**Historical Note**

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

**Table 1. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496,









#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

#### Exhibit M, Table 6. Repealed

#### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

### ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

#### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 04-3).

07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  - 1. Not reduce the retired member's pension amount; and
  - 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  - 1. The actual cost of the Coverage premium; or
  - 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
  - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  - 5. The type of change that is being made to the Coverage;
  - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

- a. First and last name;
  - b. Social Security number or U.S. Tax Identification number;
  - c. Date of birth; and
  - d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
  8. The effective date of the change, deletion, and/or enrollment;
  9. The Employer's name and telephone number;
  10. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
  2. The retired member's or Disabled member's full name;
  3. The retired member's or Disabled member's mailing address and phone number;
  4. The retired member's or Disabled member's date of birth;
  5. The retired member's or Disabled member's status with the ASRS;
  6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
  7. The following Coverage information for the Coverage policy holder:
    - a. First and last names;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social Security number or U.S. Tax Identification number;
    - c. Date of birth;
    - d. Effective date of Coverage;
  9. Six-month reimbursement totals identified by:
    - a. The month and year the premium is due for Coverage;
    - b. The total medical plan premium per month;
    - c. The total dental plan premium per month;
    - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
    - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
    - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
  10. The Employer's name;
  11. The Employer's phone number;
  12. The Employer's email address;
  13. The name of the Employer's representative; and
  14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security number or U.S. Tax Identification number;
  2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
  - a. The Social Security number or U.S. Tax Identification number;
  - b. The full name; and
  - c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
  - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
  - b. I must elect a Joint & Survivor or Period-Certain annuity option;
  - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
  - d. I must provide proof of birth date for my Contingent Annuitant;
  - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
  - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

### **ARTICLE 3. LONG-TERM DISABILITY**

#### **R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
3. "Estimated Social Security disability income amount" means the same as in R2-8-801(1).
4. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
5. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
6. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
7. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Numbering corrected and subsection reference under the "Estimated Social Security disability income amount" definition corrected (Supp. 23-2).

#### **R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

#### **R2-8-303. Long-Term Disability Calculation**

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

#### **R2-8-304. Payment of Long-Term Disability Benefit**

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.
- D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
  1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

#### **R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

#### **Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

### **ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

#### **R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-402. General Procedures**

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

#### **R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
  - 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  - 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
  - 1. The decision the agency is making in response to the letter of appeal; and
  - 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
  - 1. The agency action the ASRS is taking in response to the letter of appeal; and
  - 2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
  - 1. The name and mailing address of the member, employer, or other person filing the Request;
  - 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  - 3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
  - 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  - 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.
- I. The Board has delegated to each Health Plan Vendor the authority to:
  - 1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
  - 2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
  - 3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.
- J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

#### **R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
  - 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

### **ARTICLE 5. PURCHASING SERVICE CREDIT**

#### **R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;

- b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
  19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
  20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
  21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
  22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
  23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
  24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
  25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
    - a. After accepting an offer to work for a new Employer;
    - b. While working as an active member for a different Employer; or
    - c. Before returning to work with any Employer within 120 days of terminating employment.
  26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
  27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
  28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
  1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
  1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
  2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
  1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
  1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
  - 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  - 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
  - 1. Leave of Absence Service;
  - 2. Military Service;
  - 3. Forfeited Service; and
  - 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
  - 1. The amount the Eligible Member wants to apply, and
  - 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
  - 1. Leave of Absence Service;
  - 2. Military Service; and
  - 3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

- A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:
  - 1. One year of credited service in any plan year, or
  - 2. One month of credited service in any one calendar month.
- B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.
- C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
  - 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  - 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
  - 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and

2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
  1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
    - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
  2. Acknowledgement of the following statements of understanding:
    - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
    - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
    - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
  3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
  1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
  1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
    - b. The branch of the Uniformed Services the Eligible Member was in;
    - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
    - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
    - e. Acknowledgement that the Eligible Member will submit to the ASRS:
      - i. Proof of honorable separation for each type of Military Service listed on the form; and
      - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
    - f. Acknowledgement of the following statements of understanding:
      - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
      - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
  - 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
  - 1. The name and mailing address of the Other Public Service employer;
  - 2. The position the Eligible Member held while working for the Other Public Service employer;
  - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or

- c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
  - C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
  - 1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
  - 2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
    - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
    - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
    - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
      - i. Terminating employment;
      - ii. Terminating LTD without returning to work with an Employer; or
      - iii. The effective ASRS retirement date;
    - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
    - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
    - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
    - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
  - 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;

- c. Understands that the election to use Termination Pay is binding and irrevocable;
  - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
  - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
  - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
  - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
  - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
- 1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  - 2. Limit the payroll deduction time period to a maximum of 520 payments; and
  - 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
- 1. Irrevocable PDA is completed;
  - 2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  - 3. Eligible Member terminates all ASRS employment without transferring employment; or
  - 4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
- 1. By any method specified in R2-8-512;
  - 2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
  - 3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

#### **R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

- 1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
- 2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or
  - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
    - c. The ASRS shall not accept the following fund types:
      - i. Roth funds;
      - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      - iii. Inherited IRA;
      - iv. Coverdale Education Savings Account funds;
      - v. Hardship distributions;
      - vi. Funds not includable in gross income;
      - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      - ix. One of a series of substantially equal periodic payments made for 10 years or more;
      - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
    - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
    - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
    - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
    - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
  - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
    1. The Eligible Member's full name;
    2. The last 4 digits of the Eligible Member's Social Security number;
    3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
    4. The Authorized Representative's name and title;
    5. The Authorized Representative's telephone number; and
    6. Certification by the Authorized Representative's dated signature that:
      - a. The plan is either:
        - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
        - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
        - iii. An annuity contract described in IRC § 403(b); or
        - iv. An IRA described in A.R.S. § 38-747(H)(3);
      - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
      - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and

- d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
  - 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  - 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  - 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
  - 1. The name and current address of the person submitting the petition,
  - 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  - 3. The signature of the person submitting the petition, and
  - 4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
  - 1. The name and current address of the person submitting the objection;
  - 2. Identification of the rule;
  - 3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  - 4. The signature of the person submitting the objection; and
  - 5. The date the person signs the objection.
- B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
  - 1. The name and current address of the person making the request;
  - 2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  - 3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
  - 1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  - 2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  - 3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  - 4. Explain the background and general content of the proposed rulemaking;
  - 5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  - 6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
  - 1. Name and current address of the person submitting the petition;
  - 2. Identification of the proposed rule;
  - 3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  - 4. Reason why the public interest will not be harmed by the delayed effective date;
  - 5. Signature of the person submitting the petition; and

6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

**R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-702. General Information**

- A.** The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B.** The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C.** The ASRS shall not waive payment of contributions or interest owed under this Article.
- D.** If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
  
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A.** If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;

- b. The range of dates that any contribution was not withheld;
  - c. The member's position title during the date range listed in subsection (A)(2)(b);
  - d. Whether the member was Engaged to Work for the Employer; and
  - e. Dated signature of the member certifying the member understands:
    - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
    - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A.** Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E.** The ASRS shall provide to each, Employer and the member, an invoice with the following:
  - 1. The amount of Eligible Service for which contributions were not withheld,
  - 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  - 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  - 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  - 5. The dollar amount of contributions to be paid to the ASRS by the member.
- F.** The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022),

with an immediate effective date of May 18, 2022 (Supp. 22-2).

**R2-8-708. Expired**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed**

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS**

**R2-8-801. Definitions**

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
  - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
  - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A. The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

- A. Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B. A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C. An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- D. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- E. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- F. If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  - 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  - 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  - 1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  - 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  - 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  - 1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  - 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. COMPENSATION**

**R2-8-901. Definitions**

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-902. Remitting Contributions**

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-903. Accrual of Credited Service**

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-904. Compensation from An Additional Employer**

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
  - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
  - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
  - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
  - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

**R2-8-905. Expired**

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

## ARTICLE 10. MEMBERSHIP

### R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

### Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

### R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;
  6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
  1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
  1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.

- J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1003. Charter School Employer Membership**

- A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**

- A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the

political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

- C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1005. Employer Reporting**

- A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. § 15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;

7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
  1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

#### **R2-8-1006. Prior Service Purchase Cost for New Employers**

- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
  1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
  1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
  6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.
- G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.
- H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

#### **Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

### **ARTICLE 11. TRANSFER OF SERVICE CREDIT**

#### **R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.

5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
  1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
  1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
  1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
  1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A. Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
  - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  - 2. The Member's Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  - 1. The member's full name;
  - 2. The last four digits of the member's Social Security number;
  - 3. The name of the Other Retirement Plan; and
  - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  - 1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member's Accumulated Contribution Account Balance in the ASRS.
  - 2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
    - b. The Member's Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  - 1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  - 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member's service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.
- H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member's service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee's notarized signature.

**Historical Note**

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

### 38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
  - (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
  - (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
  - (iv) Payments for allowances.
  - (v) Reimbursements for employee business expenses or employee personal expenses.
  - (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
  - (vii) Payments made in lieu of any employer-paid insurance coverage.
  - (viii) Workers' compensation, unemployment compensation payments and disability payments.
  - (ix) Merit awards pursuant to section 38-613.
  - (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
  - (xi) Payments made in the form of goods or services in lieu of gross wages.
  - (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
  - (xiii) Payments in excess of the section 401(a)(17) of the internal revenue code limits established in section 38-746.
  - (xiv) Payments for any other employment benefit.
  - (xv) Payments for which employer or employee contributions have not been paid.
8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.
9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.
10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
  - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
  - (c) Means any person receiving a benefit under ASRS.
  - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
  - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
  - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
    - (i) Is not otherwise an employee of an employer.
    - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
    - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

**38-712. ASRS purpose: trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.
2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.
3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.
4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming a person with a disability.
5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.

B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

38-713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.

2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

- 1. A portfolio manager acting in a fiduciary capacity.
- 2. A securities analyst.
- 3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.
- 4. A chartered financial analyst in good standing as determined by the CFA institute.
- 5. A professor at the university level teaching economics or investment related subjects.
- 6. An economist.
- 7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

- 1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.
- 2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year not later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The

report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

K. In determining the past service funding period, the board shall seek to improve the funded status whenever the trust fund established by section 38-712 is less than one hundred percent funded.

**38-715. Director: powers and duties**

- A. The board shall appoint a director. The director shall serve at the pleasure of the board.
- B. The director shall appoint a deputy director and assistant directors with the approval of the board.
- C. The director, under the supervision of the board, shall:
  1. Administer this article.
  2. Be responsible for the recruitment, hiring and day-to-day management of employees.
  3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.
  4. Prescribe procedures to be followed by employers for remitting data and monies to ASRS and for receiving data and monies from ASRS.

5. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account, the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

4. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. For current or prospective employees of ASRS, the director, under the supervision of the board, may:

1. Conduct criminal records checks. The director may require a current or prospective employee to submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

2. Conduct credit checks for accounting, investment and other finance-related positions. The director shall establish a policy for conducting credit checks on a current employee that includes the method for determining when a credit check may be conducted, retaining records relating to the reason for the credit check and notifying an employee of the credit check and the result of the credit check.

F. The director and all persons employed by the director are subject to section 38-611 and title 41, chapter 4, article 4.

G. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following ASRS positions:

1. Director.
2. Deputy director.
3. Chief investment officer.
4. Fiduciary or investment counsel.

**38-716. Employers' responsibilities under the system**

In addition to any other requirements of this article or article 2.1, 7 or 8 of this chapter, an employer of a member shall:

1. Cooperate and collaborate with ASRS and follow all ASRS procedures to ensure the proper enrollment of members in the system.
2. Submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to make eligibility determinations and for the proper administration of the plan.
3. Attend the ASRS annual training conference.

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.

**38-718. Investment managers: general powers and duties: investment of monies: limitations**

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member

nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

### 38-718. Investment managers; general powers and duties; investment of monies; limitations

A. A financial institution serving as an investment manager does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

B. The board shall appoint and may remove multiple investment managers to invest and reinvest the assets of ASRS. The board may authorize the director to retain and manage staff to make investments as an investment manager.

C. An investment manager shall be qualified to make the type of investments for which the investment manager is appointed.

D. The board shall:

1. Prescribe investment goals and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in this section.

2. Allocate assets and use investment strategies to meet the investment goals and policies ASRS prescribes.

3. Adopt specific directives for the guidance of investment managers.

4. Review the performance of each investment manager at least annually or at the request of a board member.

5. Prescribe investment diversification programs and assign investment manager responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

E. An investment manager shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS.

F. An investment manager may invest and reinvest in the name of ASRS all ASRS monies assigned to the investment manager and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article. An investment manager may hold, purchase, sell, assign, loan, borrow, transfer and dispose of any of the securities and investments in which any of its account monies are invested, subject to the specific directives determined by ASRS. An investment manager shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

G. The director may enter into security loan agreements with one or more security lending entities.

H. No more than eighty per cent of ASRS assets may be invested at any given time in equities, measured at market value.

I. No more than forty per cent of ASRS assets may be invested in non-United States public investments, measured at market value.

J. No more than sixty per cent of ASRS assets may be invested internally, measured at market value.

K. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgage backed securities and agency debentures issued by federal agencies, measured at market value.

L. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the inter-American development bank, measured at market value.

M. If a limitation in subsection H, I, J, K or L of this section is reached, ASRS is not required to sell assets, but shall not make any further investments of that type until the limit is no longer exceeded.

N. Notwithstanding any other law, an investment manager is not required to invest in any type of investment that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

O. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted and enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

P. Proprietary commercial information that is provided to the board, director, investment manager, employees of the director and attorneys of the board or the director relating to investments in which an investment manager has invested or has considered for investment is confidential and not a public record if the information is information that customarily would not be released to the public by the person or entity from whom the information was obtained.

#### 38-719. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-720. ASRS depository

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.

#### 38-721. Administration account

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.

3. Actuarial consulting fees.

4. Retiree payroll.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection E, paragraph 1 and subsection I, paragraphs 2 and 3, section 38-718, subsection D, paragraph 5 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

### 38-722. Abandoned monies: disposition

A. Except as otherwise provided in this section, the trust fund established by section 38-712 is exempt from title 44, chapter 3.

B. Monies in the ASRS trust fund and the LTD trust fund established by section 38-797.02 are presumed abandoned if the apparent owner, as defined in section 44-301, has not communicated in writing with ASRS and has not otherwise indicated an interest in the monies for the three year period following the required beginning date of distributions pursuant to section 38-775.

C. At the time monies are presumed abandoned pursuant to subsection B of this section, any other property right accrued or accruing to the owner as a result of the interest in those monies, and not previously presumed abandoned, is also presumed abandoned.

D. Interest ceases to accrue on the monies on the date the monies are presumed abandoned.

E. Before monies are presumed abandoned, ASRS shall attempt to contact the apparent owner in writing. If the apparent owner is a member, beginning five years before the apparent owner's required beginning date of distributions pursuant to section 38-775 and for three years after that date, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a retirement benefit. If the apparent owner is a beneficiary, beginning in the calendar year containing the fifth anniversary of the member's death and for three years, ASRS shall annually send a notice to the apparent owner notifying the apparent owner of the owner's eligibility for a survivor benefit. If this notice is returned by the postal authority as undeliverable, ASRS shall make a good faith attempt to locate the apparent owner, including contacting any known beneficiary on record with ASRS, searching public databases to identify the address of the apparent owner or using the services of a third-party address verification service. If the good faith attempt to locate the apparent owner fails and the base amount of the unclaimed monies is three hundred dollars or more, ASRS may use the services of a people search service. A fee imposed by the people search service shall not be deducted from the member's benefit and these expenditures are continuously appropriated and shall be paid from the administration account established pursuant to section 38-721 in the amount deemed necessary by the board.

F. If at any time an owner, as defined in section 44-301, establishes an entitlement in the monies, ASRS shall withdraw the monies from either the ASRS trust fund or the LTD trust fund, whichever is applicable, and pay the owner the monies or benefit to which the owner is entitled pursuant to this article or article 2.1 of this chapter, including interest at a rate determined by ASRS, if applicable.

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-724. Surrender of property subject to levy; authority to release levy and return property; definitions

A. Any person in possession of, or obligated with respect to, property subject to levy on which a levy has been made, on request of ASRS, shall surrender the property or discharge the obligation to

ASRS, except the part of the property that is, at the time of the request, subject to an attachment or execution under any judicial process.

B. A person who fails or refuses to surrender any property subject to levy, on request by ASRS, is liable in person and estate to this state in a sum equal to the value of the property not so surrendered, but not exceeding the amount of debt for the collection of which the levy has been made, with costs and interest on the sum at the interest rate determined by the board from the date of the levy or, in the case of a levy described in section 38-723, subsection E, from the date the person would otherwise have been obligated to pay the amounts to the debtor. Any amount, other than costs, recovered under this subsection shall be credited against the debt for the collection of which the levy was made.

C. A person in possession of or obligated with respect to property subject to levy on which a levy has been made who, on request by ASRS, surrenders the property or discharges the obligation to ASRS is discharged from any obligation or liability to the debtor with respect to the property arising from the surrender or payment.

D. ASRS may release a levy on all or part of property levied on. The release shall not operate to prevent any subsequent levy.

E. If ASRS determines that property has been wrongfully levied on, ASRS shall return the specific property levied on or an amount of money equal to the value of the property levied on.

F. For the purposes of this section:

1. "Levy" includes the power of distraint and seizure by any means.

2. "Person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, or any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership, who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property or to discharge the obligation.

#### 38-725. Financial institutions data match; prohibited disclosure; fee; definition

A. ASRS may enter into agreements with financial institutions that conduct business in this state to develop and operate a data match system to assist ASRS in the collection of monies owed. The data match system shall use automated data exchange procedures to the maximum extent possible.

B. The data exchanges shall include the name, address of record, social security number and any other identifying information for each person who maintains an account at the institution and who owes money as identified by ASRS by name and social security number.

C. ASRS or its agent may disclose a debtor's financial record under this section only in order to enforce the collection of the money the debtor owes to ASRS.

D. ASRS may pay a reasonable fee to a financial institution for conducting a data match. The fee shall not exceed the actual costs incurred by the financial institution.

E. For the purposes of this section "financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

**38-727. Eligibility; options**

A. The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is elected or appointed before January 1, 2014, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this subsection.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the elected officials' defined contribution retirement system pursuant to article 3.1 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer or a postdoctoral scholar who is employed by a university under the jurisdiction of the Arizona board of regents is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits, who is elected or appointed before January 1, 2014 and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation before being elected to an office subject to term limits or any benefits expressly provided by law.

8. A person may elect not to participate in ASRS if the person becomes employed by an employer after the person has attained at least sixty-five years of age, is not an active member, inactive member, retired member or receiving benefits pursuant to article 2.1 of this chapter and does not have any credited service or prior service in ASRS. The employee shall make the election not to participate in writing and file the election with ASRS within thirty days after employment. The election not to participate is irrevocable for the remainder of the person's employment for which the person made the election and constitutes a waiver of all benefits provided by the Arizona state retirement system. The period the person works is not eligible for purchase under section 38-743 or 38-744.

9. The following are ineligible for membership in ASRS:

(a) A person who performs services in a hospital, home or other institution as an inmate or patient at the hospital, home or other institution.

(b) A person who performs agricultural labor services, as defined in section 210 of the social security act.

(c) A person who is a nonresident alien temporarily residing in the United States and who holds an F-1, J-1, M-1 or Q-1 visa when services are performed.

(d) A person who performs services for a school, college or university in this state at which the person is enrolled as a student, as defined by the employing institution. The employing institution

shall maintain an appeal process for a person who disagrees with the employing institution's determination that the person is a student and not eligible for membership in ASRS.

(e) A person who performs services under a program designed to relieve the person from unemployment.

B. The following elected officials are subject to this article if the member's employer is an employer under article 3 of this chapter:

1. A state elected official who is subject to term limits, who is elected or appointed on or before December 31, 2013 and who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability because the state elected official had previously elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A.

2. An elected official, as defined in section 38-831, who is an active, an inactive or a retired member of ASRS or a member of ASRS with a disability, if the elected official's employer is a participating employer under this article and the elected official is eligible for ASRS service credit for the elected official's service.

#### 38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amount equal to the present value required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan using the actuarial assumptions that are approved by the board. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

J. Notwithstanding any other law, an employee of a political subdivision who was previously a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that public employee retirement system for any period of employment is ineligible to receive service credit from ASRS for the same period of employment.

### 38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The transfer shall be made pursuant to section 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

#### **38-735. Payment of contributions: recovery of delinquent payments**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made by employers pursuant to this article or article 2.1, 7 or 8 of this chapter become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this article or article 2.1, 7 or 8 of this chapter, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer that is liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state. The employer shall record delinquent payments that are recovered or deducted from other monies pursuant to this subsection pursuant to applicable accounting and financial reporting standards.

#### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 2011, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.

B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

38-737. Employer contributions; prepayment; definitions

A. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements contained in this article, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the fiscal year immediately preceding the preceding fiscal year, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two percent of compensation of all employees of the employers.

Beginning July 1, 2011 through June 29, 2016, the total employer contribution shall be determined on the projected unit credit method. Beginning June 30, 2016, the board shall determine the actuarial cost method pursuant to section 38-714. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period that is determined by the board and consistent with generally accepted actuarial standards.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined on an annual basis by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide by December 1 of each fiscal year to the governor, the speaker of the house of representatives and the president of the senate the contribution rate for the ensuing fiscal year and the unfunded actuarial accrued liability, the funded status based on the actuarial value of assets and market value of assets and the annualized rate of return and the ten-year rate of return as of June 30 of the prior fiscal year.

D. Notwithstanding any other provision of this article, an employer may prepay the employer's 401(a) pension contributions directly to ASRS according to a written agreement between the employer and ASRS as follows:

1. 401(a) pension contributions that the employer prepays according to this subsection may be deposited, as determined by the employer and managed by ASRS, directly in either the ASRS trust fund established by section 38-712 or a section 115 trust.

2. ASRS shall determine the following options available to the employer:

(a) The amortization time periods.

(b) The frequency and dates that prepayments can be made.

(c) The maximum and minimum amounts of 401(a) pension contributions that the employer can prepay.

(d) Any other options or obligations that the employer may have when entering into this written agreement.

3. The earnings accrual rate shall be the ASRS total 401(a) pension fund rate of return, or the actual rate of return of a short-term investment through ASRS, as requested by the employer and agreed to by ASRS.

4. The 401(a) pension contributions the employer prepays and the accrued earnings shall be managed at the discretion of ASRS subject to section 38-718.
  5. 401(a) pension contributions that the employer prepays and accrued earnings may be used solely to reduce the employer's future 401(a) pension contributions as required from the employer pursuant to this section and section 38-735.
  6. The employer shall determine when to use the 401(a) pension contributions the employer prepays and the accrued earnings from those 401(a) pension contributions.
  7. ASRS shall provide the employer an annual statement of 401(a) pension contributions the employer prepaid and the accrued earnings.
  8. Notwithstanding any other provision of this subsection, an employer may not prepay 401(a) pension contributions according to this subsection either:
    - (a) In an amount greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
    - (b) After the total of the unamortized prepaid 401(a) pension contributions and the accrued earnings is equal to or greater than the employer's net pension liability as reflected by ASRS in its most recent applicable governmental accounting standards report.
  9. After an employer elects amortization terms, ASRS shall provide the employer an amortization schedule annually that is current and based on the employer's election.
  10. If ASRS determines to no longer offer the option of prepaying the employer's 401(a) pension contributions directly to ASRS, any 401(a) pension contributions the employer prepays and the accrued earnings remaining on account shall be used for future obligations according to the written agreement between the employer and ASRS.
  11. Assets transferred in or out of or held in the ASRS trust fund established by section 38-712, or a section 115 trust, and the accrued earnings are exempt from state, county and municipal taxes.
  12. The legislature intends that the accrued earnings not be subject to federal income tax. ASRS may adopt additional rules, policies and procedures as ASRS deems necessary or appropriate to fulfill the legislature's intent that the accrued earnings not be subject to federal income tax.
  13. If ASRS receives notification from the United States internal revenue service that this subsection or any portion of this subsection will jeopardize the tax-exempt status of the 401(a) pension contributions the employer prepays according to this subsection and the accrued earnings, the portion of this subsection that will cause the disqualification does not apply.
- E. In addition to the requirements of subsection D of this section, any prepayment agreement made between ASRS and this state or any state agency is subject to the following requirements:
1. Any prepayment amounts deposited with ASRS must be from an appropriation specifically for that purpose that is passed by the legislature and signed by the governor.

2. Any prepayment amounts or accrued earnings used to reduce the employer's 401(a) pension contributions must be authorized for a specific fiscal year by legislation that is passed by the legislature and signed by the governor.

F. For the purposes of this section:

1. "401(a) pension contributions" means the portion of an employer's pension contribution that is specific to the retirement program established under this article and qualified under section 401(a) of the internal revenue code.

2. "Section 115 trust" means a trust whose income is exempt from gross income pursuant to section 115 of the internal revenue code for essential government functions integral to this state and its political subdivisions.

### 38-738. Adjustment and refund

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit or, if the request is made within one year after the date of overpayment, shall return the contributions to the employer. ASRS may not pay an employer earnings attributable to the excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of law, ASRS shall provide the employer with an employer credit against future contributions if the employer requests an employer credit. On receipt of an employer credit or return of contributions pursuant to this subsection, the employer shall return any member portion of the returned contributions to the member.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. For active members, payments shall be made as provided in section 38-747. For members who are inactive, retired or on long-term disability, payments shall be made using after-tax income and a personal check, cashier's check or money order. If the member does not make the payment within ninety days after being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this paragraph, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days after being notified by

ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

8. A member who previously received a return of contributions pursuant to section 38-740 may receive an adjustment of employer contributions or service credits pursuant to this section only for qualifying employment and compensation that occurred after the member's most recent return of contributions pursuant to section 38-740.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions was paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions was made is considered public service credit. The member may purchase this service pursuant to section 38-743.

E. Notwithstanding any other law, an employer may correct a contributions error pursuant to subsection B of this section by making payment adjustments through the employer's payroll reporting for the contributions that were not submitted if both of the following apply:

1. The adjustment is made within the same fiscal year that the contributions were due to ASRS.

2. The employer obtains written consent from the employee to make the adjustment to the employee's paycheck.

F. Notwithstanding any other law, if an employer pays less than the correct amount of employer or member contributions into ASRS, the correct amount of member contributions may not be paid to ASRS after the death of the member.

### 38-739. Credited service

- A. A member shall not earn more than one year of credited service in any fiscal year.
- B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.
- C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.
- D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.
- E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.
- F. The following years of service are excluded from credited service under this article:
  - 1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.
  - 2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.

#### 38-739.01. Credited service retention

Consistent with the compliance statement issued by the United States internal revenue service, an employee who is employed with an ASRS employer in a position that was exempt from ASRS membership because the position was not included in agreements providing for the employee's coverage under the federal old-age and survivors insurance system but on whose behalf the employer has remitted ASRS contributions shall retain credited service for the period of employment for which the employer remitted ASRS contributions on the employee's behalf.

### 38-740. Return of contributions

- A. A member whose membership commenced before July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:
  - 1. If the member has less than five years of credited service, ASRS shall disburse all of the member's contributions.
  - 2. If a member has five or more years of credited service, ASRS shall disburse the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738,

subsection B, paragraph 1. The percentage of employer contributions paid on behalf of the member shall be as follows:

- (a) 5.0 to 5.9 years of credited service, twenty-five percent.
- (b) 6.0 to 6.9 years of credited service, forty percent.
- (c) 7.0 to 7.9 years of credited service, fifty-five percent.
- (d) 8.0 to 8.9 years of credited service, seventy percent.
- (e) 9.0 to 9.9 years of credited service, eighty-five percent.
- (f) 10.0 or more years of credited service, one hundred percent.

3. Interest on the returned contributions as determined by the board.

B. A member whose membership commenced on or after July 1, 2011 and who leaves employment other than by retirement or death may elect to receive a return of all of the member's contributions with interest as determined by the board.

C. Notwithstanding subsection B of this section, if a member has five or more years of credited service and the member is terminated solely because of an employer reduction in force by reason of a lack of monies or elimination of the member's position, the member is entitled to receive the amounts prescribed in subsection A of this section.

D. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

E. If ASRS has disbursed an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the return of contributions.

F. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

G. If ASRS disburses more than the amount due to a member or an alternate payee pursuant to this section, the person who received the overpayment shall repay the amount of the overpayment together with interest at the interest rate earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

#### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, ASRS shall disburse benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

#### 38-742. Reinstatement

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the ASRS paid at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

C. A member who is receiving benefits pursuant to section 38-797.07 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A or B, may redeposit the amount of the contributions the ASRS paid at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credits acquired by the previous employment shall be reinstated. The member is subject to the benefits and duties in effect at the time of the member's most recent reemployment except as provided in section 38-711, paragraph 5, subdivision (a). If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.

#### 38-743. Public service credit

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States, excluding any time worked for a prison while the member was incarcerated, the member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B of this section. For a member whose membership date is on or after July 20, 2011, the member may receive not more than sixty months of credited service.

B. A member who elects to receive credit for service with the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States shall pay to ASRS an amount equal to the present value of the additional benefit that is

derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

**38-744. Leave of absence: credit for leave without pay**

A. A member may elect to be credited with service for retirement purposes for an officially granted leave of absence from employment without pay if all of the following apply:

1. At the time the absence was granted the member was an active member of ASRS or a member who was receiving benefits pursuant to section 38-797.07.

2. At the time the credit is requested the member is an active member of ASRS, receiving benefits pursuant to section 38-797.07 or a former active member of ASRS who has not withdrawn contributions from ASRS pursuant to section 38-740 and who was unable to resume employment because a position is not available.

3. The member returns to employment with the same employer, unless employment could not be resumed because of disability or a position was not available.

4. The member elects not more than one year of the leave and, for a member whose membership date is on or after July 20, 2011, not more than sixty months of credited service pursuant to this section.

5. The member pays the amount provided in subsection B of this section.

6. The member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive a retirement benefit from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

D. If a member's membership date is on or after July 1, 2010, the member shall have at least five years of credited service in ASRS before electing to receive credit for service pursuant to this section.

E. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

**38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.
3. If a member's membership date is on or after July 1, 2010, the member must have at least five years of credited service in ASRS.
4. Except as provided by 10 United States Code section 12736, the member is not yet eligible for a military retirement benefit.

B. For a member whose membership date is on or after July 20, 2011, the member may purchase not more than sixty months of credited service pursuant to subsection A of this section.

C. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

D. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.
2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
3. Volunteers or is ordered into active military service of the United States as part of a military call-up.
4. One of the following occurs:
  - (a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.
  - (b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Develops a disability as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

E. Contributions made pursuant to subsection D of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member returns to employment or the date the member should have returned to employment pursuant to 20 Code of Federal Regulations section 1002.115, whichever date is earlier.

2. The date the member is released from service related hospitalization or two years after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

F. Notwithstanding any other law, on payment of the contributions made pursuant to subsection D of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

G. The employer shall make contributions pursuant to subsection D of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member's average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

H. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection D of this section.

J. In addition to, but not in duplication of, the provisions of subsection D of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

K. A member who does not currently perform services for an employer by reason of qualified military service, as that term is defined in section 414(u) of the internal revenue code, and who is receiving differential wage payments, as that term is defined in section 3401(h)(2) of the internal revenue code, shall not be considered as having a severance from employment for all purposes under ASRS during the period the differential wages are being paid by the employer to the employee.

#### 38-746. Compensation limitation: adjustments

A. Except as provided in subsection E, beginning on July 1, 2002, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed two hundred thousand dollars. In determining benefit accruals under ASRS for fiscal years beginning after December 31, 2001 and except as provided for in subsection E, the annual compensation limit under this subsection for fiscal years beginning before January 1, 2002 is two hundred thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the fiscal year of ASRS that begins with or within the calendar year.

E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount of compensation taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

#### 38-747. Purchase of credited service; payment; limitations; definitions

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection. For the purposes of this paragraph, "other compensation" includes a member's termination pay.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. In the case of an election to utilize all or any part of the member's termination pay to purchase credited service, the member's election shall be made at least three full calendar months before the date of the member's termination of employment and entitlement to receive the termination pay. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. For the purposes of this paragraph, "termination pay" means any lump sum that is paid at the member's termination of employment for accrued vacation, sick leave or overtime pay.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's employment with an ASRS employer all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

7. If a member transfers employment from one participating employer with which the member has made an irrevocable election pursuant to this subsection to another participating employer, the member and the successor participating employer shall complete the terms of the irrevocable election that the member made with the original participating employer.

E. The following limits apply to contributions to ASRS:

1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS and to the extent permitted under section 414(v) of the internal revenue code, if applicable, in any one limitation year, the annual additions contributed or allocated to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) \$40,000 or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) One hundred percent of the member's compensation for the limitation year. The compensation limit prescribed in this subdivision does not apply to any contribution to ASRS for medical benefits after a member's separation from service, within the meaning prescribed in section 401(h) or 419A(f)(2) of the internal revenue code, that is otherwise treated as an annual addition.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any

other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection L of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code and subsection J of this section, accepting a direct transfer of any eligible rollover distribution from one or more:

- (a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

- (b) Annuity contracts described in section 403(b) of the internal revenue code.

- (c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

3. Accepting from a member a direct transfer from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code of an amount that would otherwise be eligible to be rolled over to ASRS under the provisions of section 408(d)(3)(A)(ii) of the internal revenue code if the amount had been received by the member and would have otherwise been includible in the member's gross income but for the direct transfer.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by a member pursuant to subsection B or D of this section, the board may accept a direct trustee-to-trustee transfer from retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code, an annuity contract described in section 403(b) of the internal revenue code or an eligible deferred compensation plan described in section 457(b) of the internal revenue code for the payment for credited service purchases pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct trustee-to-trustee transfer is from a retirement program that is qualified under section 401(a) of the internal revenue code and that includes a cash or deferred arrangement described in section 401(k) of the internal revenue code, the member on whose behalf the transfer was made is not eligible to retire under section 38-764, subsection I before the date the member attains fifty-nine and one-half years of age.

J. ASRS shall separately account for all amounts rolled over or directly transferred to ASRS. Subject to the limitations contained in the internal revenue code applicable to the type of plan from which an eligible rollover distribution is transferred, to the extent any eligible rollover distribution that is directly transferred to ASRS consists wholly or partially of amounts that would otherwise not be included in the member's gross income if not so transferred, ASRS shall separately account for the amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the amount that is includable in gross income and the portion of the amount that is not includable in gross income.

K. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

L. Notwithstanding any provision of this article to the contrary, if the annual additions credited on behalf of an ASRS member during any limitation year exceed the limits of section 415(c) of the internal revenue code and subsection E of this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance issued by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

M. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

N. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

O. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection P of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

P. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

Q. Subsection O of this section shall be construed and interpreted in accordance with section 415 of the internal revenue code and the final treasury regulations issued under that section.

R. For the purposes of this section:

1. "Compensation" has the same meaning prescribed in section 38-769.

2. "Corrective contributions" means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.
3. "Defined contribution plan" has the same meaning prescribed in section 38-769.
4. "Eligible rollover distribution" has the same meaning prescribed in section 38-770.
5. "Interest and gains" means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.
6. "Limitation year" has the same meaning prescribed in section 38-769.
7. "Participating employer" means an employer that participates in ASRS.
8. "Subject benefits" means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions that were made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions that were made by the member after June 30, 1981 and that were not picked up as provided in section 414(h)(2) of the internal revenue code.

**38-748. Employer payments for ineligible contributions; definitions**

A. If an employer pays contributions on behalf of any person who is not eligible by statute or rule for ASRS membership or pays contributions on compensation that is not eligible by statute or rule for ASRS contributions and either ASRS or a court determines that ASRS shall provide a person with any benefit or credit under this article or article 2.1 of this chapter based on such contributions, the employer shall pay to ASRS any unfunded liability resulting from the provision of benefits or credit to the person.

B. If the employer does not remit full payment of the unfunded liability pursuant to subsection A of this section within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full.

C. Credited service ceases to accrue as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

D. If the amount in the person's ASRS account is greater than the present value of the benefit or credit, ASRS shall retain the entire account and is not required to refund, credit or offset any excess against future contributions.

E. This section applies to an employer that employs, either directly or indirectly, a person who performs services for a third-party organization and that does not have a written representation by ASRS of the person's eligibility.

F. For the purposes of this section:

1. "Amount in the person's ASRS account" means two times the person's retirement contributions made pursuant to section 38-736:

(a) Plus:

(i) Interest on the person's retirement contributions made pursuant to section 38-736.

(ii) Any contributions made for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(iii) Interest on the amount contributed for the purchase of service credits pursuant to section 38-742, 38-743, 38-744 or 38-745.

(b) Minus any amounts paid by ASRS pursuant to this article or article 2.1 of this chapter.

2. "Interest" means the interest rate assumption that is approved by ASRS for actuarial equivalency.

3. "Unfunded liability" means:

(a) For a person who is not eligible by statute or rule for ASRS membership, the amount, if any, that the present value of the person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount in the person's ASRS account calculated as of the date that ASRS or a court first determines that ASRS shall provide any benefit or credit to the person.

(b) For contributions on compensation that is not eligible by statute or rule for ASRS contributions, the difference, if any, of the amount that the present value of a person's benefit or credit, using the actuarial assumptions approved by ASRS, exceeds the amount of the present value of the benefit or credit the person would receive if the ineligible contributions, and the compensation and credit associated with those ineligible contributions, had not been reported to ASRS and the amount in the person's ASRS account that is associated with the ineligible contributions on compensation.

**38-749. Employer termination incentive program; employer payment of actuarial cost; definition**

A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to ASRS, the employer shall pay to ASRS the amount of the unfunded liability. ASRS shall determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify ASRS if the employer plans to implement a termination incentive program that may affect ASRS funding.

C. If ASRS determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to ASRS, ASRS shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or compensatory time unless the payment is enhanced beyond the employer's customary payment.

### 38-750. Transfers out of the system

A. If an employee has made an irrevocable election pursuant to section 38-747, subsection B or D and transfers participation to another defined benefit retirement system or plan of this state without a termination of employment, within ninety days after the date of the transfer, ASRS shall transfer to the subsequent defined benefit retirement system or plan the amount the employee paid for the purchase of the credited service plus interest as determined by ASRS.

B. If the assets transferred from ASRS are less than the cost of the benefits accrued relative to the credited service as calculated pursuant to section 38-922, subsection B, paragraph 2, and unless a law otherwise provides, the employee shall elect either to pay the difference to the subsequent defined benefit retirement system or plan or accept a reduced amount of service credits. If the employee elects to pay the difference, the amount paid shall be added to the employee's accumulated contribution account balance. If the employee elects to accept a reduced amount of service credits, the amount of service credits granted shall be equal to the amount of service credits purchased multiplied by the ratio of the amount of assets transferred to the amount calculated pursuant to section 38-922, subsection B, paragraph 2.

C. The transferred employee and the employer shall complete the terms of the irrevocable election by making payments to ASRS.

D. If the employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, on termination of employment the employee shall elect to have ASRS:

1. Promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to elect to have the assets transferred within thirty days after termination of employment, the employee is deemed to have made an election as prescribed in paragraph 2.

2. On written request by the employee, promptly return to the employee the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If no application is received by ASRS within sixty days after termination of employment, ASRS shall issue the payment directly to the employee.

E. If the employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system, after termination of employment the employee may elect within thirty days of termination of employment to have ASRS promptly transfer to the subsequent defined benefit retirement system or plan the principal amount paid by the employee for the purchase of credited service plus interest as determined by ASRS. If an unfunded liability is created, subsection B of this section applies. If the employee fails to make the election under this subsection, ASRS shall deem the employee as an inactive member of ASRS.

F. If an employee is given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is

receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is eligible to transfer to the retirement system or plan, but the election to transfer terminates the benefit from ASRS on the effective date of the transfer.

G. If an employee is not given an election to transfer to another defined benefit retirement system or plan of this state or to remain with the employee's current retirement system and the employee is receiving a benefit pursuant to this article based on the employee's own service or article 2.1 of this chapter, the employee is not eligible to transfer to another retirement system or plan.

**38-751. Nonparticipatory employer liability allocation; exemption; definitions**

A. ASRS shall establish a separate fund for an employer, other than a charter school, that is no longer participating in ASRS as a result of any of the following:

1. The character of the employer changes from a public entity to a private entity.
2. An employer, other than this state, dissolves.
3. Through legislative action, the employer is no longer enrolling new employees in ASRS or no longer contributing to ASRS on behalf of current employees or groups of employees who otherwise would be eligible for ASRS membership.

B. For a nonparticipating employer described in subsection A of this section, ASRS shall allocate an actuarial accrued liability and a designated asset amount to the nonparticipating employer's separate fund as of the nonparticipation date, which shall be calculated as follows:

1. The actuarial accrued liability shall equal the sum of the plan employer actuarial accrued liability and the LTD program employer actuarial accrued liability. Actuarial accrued liability shall be calculated based on the same actuarial assumptions and methods as the actuarial valuation performed immediately preceding the nonparticipating employer's nonparticipation date.

2. The designated asset amount shall equal the sum of the following:

- (a) The plan employer actuarial accrued liability multiplied by the plan funded percentage.
- (b) The LTD program employer actuarial accrued liability multiplied by the LTD program funded percentage.

C. All monies and securities transferred to the nonparticipating employer's separate fund shall be credited to that fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes. ASRS shall make all decisions regarding the nonparticipating employer's separate fund.

D. After establishing the nonparticipating employer's separate fund, the fund shall be adjusted for all of the following:

1. All contributions made by employees of the nonparticipating employer.
2. All contributions made by the nonparticipating employer.

3. All plan, all LTD program and any other benefits paid to the nonparticipating employer's members who are active, inactive, retired or on long-term disability.

4. All plan, all LTD program and any other benefits paid to the survivors of the nonparticipating employer's members.

5. The applicable share of the investment gains and losses.

6. Expenses associated with the administration of the nonparticipating employer's separate fund, including any administrative, development, actuarial, legal, custodial and investment management costs associated with the fund. These expenses shall be paid directly by the nonparticipating employer or included in the employer's liability for the purposes of determining the employer's contribution rate.

E. After establishing the nonparticipating employer's separate fund, the nonparticipating employer and any employees of that employer who are enrolled in ASRS shall continue to have contribution requirements to the nonparticipating employer's separate fund. The contribution requirements shall be calculated as follows:

1. All employees of the nonparticipating employer who are enrolled in ASRS shall continue to make contributions through payroll deductions based on the contribution rate determined for the employees of participating employers of ASRS pursuant to section 38-736.

2. The nonparticipating employer shall continue to make contributions through lump sum payments in accordance with section 38-735, equal to the sum of:

(a) Contributions owed through payroll deductions based on the contribution rate determined for participating employers pursuant to section 38-737.

(b) The amount required to amortize the past service funding requirement in the nonparticipating employer's separate fund over a period that is determined by the board and that is consistent with generally accepted actuarial standards. In determining the past service funding period, the board shall seek to improve the funded status whenever the nonparticipating employer's separate fund is less than one hundred percent funded.

F. The ASRS actuary shall determine the actuarial assumptions used to determine the contribution requirements for the nonparticipating employer under subsection E of this section. Notwithstanding section 38-737, the contribution for the nonparticipating employer may not be determined as a percentage of compensation due to the anticipated decline of compensation for employees of the nonparticipating employer participating in ASRS. The nonparticipating employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS at a rate that is consistent with the rate paid by the participating employers. Each fiscal year, amounts that are not remitted through payroll contributions pursuant to this section shall be invoiced to the employer and shall be paid within the same fiscal year the nonparticipating employer is invoiced.

G. This section does not permit an employer to alter the irrevocable agreement approved by the board under section 38-729.

H. For the purposes of calculating an employer's liability under this section, members who are active, inactive, retired or on long-term disability are considered employees of the nonparticipating employer

if the member's most recent employer was the nonparticipating employer as of the nonparticipation date.

I. This section does not apply to an employer whose existence was terminated by legislative action or otherwise became a nonparticipating employer as described in subsection A of this section on or before January 1, 2013.

J. For the purposes of this section:

1. "LTD program" means the program established by article 2.1 of this chapter.

2. "LTD program employer actuarial accrued liability" means the actuarial accrued liability for the employer's active and inactive members and the open LTD program claims for the employees of the employer as of the nonparticipation date.

3. "LTD program funded percentage" means the total market value of LTD program assets divided by the total LTD program actuarial accrued liabilities, as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the LTD program funded percentage is one hundred percent.

4. "Nonparticipation date" means the date on which the employer is no longer participating in ASRS.

5. "Plan" means the retirement plan established by this article.

6. "Plan employer actuarial accrued liability" means the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for the employer's active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date.

7. "Plan funded percentage" means the plan's total market value of assets divided by the plan's actuarial accrued liability for all benefits provided under this article, including benefits established in section 38-783, for all active, inactive or retired members as of the actuarial valuation performed immediately preceding the nonparticipation date. If the percentage is greater than one hundred percent, the plan funded percentage is one hundred percent.

**38-755. Member's account information: beneficiary designation: spousal consent: confidentiality**

A. ASRS shall make information concerning a member's account accessible to the member in written or electronic form. This information shall include the member's current account balance, contact information, beneficiary election, estimated retirement date and estimated benefit amount.

B. The member may change the member's beneficiary at any time in a manner established by ASRS.

C. A member who is married shall name and maintain the member's current spouse as a beneficiary to receive at least fifty percent of the member's account, unless naming or maintaining the current spouse as a beneficiary violates another law, an existing contract or a court order. The member's current spouse may consent to a waiver of this requirement pursuant to section 38-776.

D. In order to protect a member's identity from fraud, abuse, theft or civil or criminal activity, information about a member is not subject to inspection pursuant to title 39, chapter 1, article 2, except that the following information about a member is subject to inspection:

1. The member's name.
2. Whether the member is an active member as defined in section 38-711, an inactive member as defined in section 38-711 or a retired member as defined in section 38-711.
3. The member's current or most recent employer.
4. For a retired member, the average monthly compensation, as defined in section 38-711, used to calculate the member's retirement benefit.
5. The credited service as defined in section 38-711 on account for an active or inactive member or the credited service used to calculate the retirement benefit for a retired member.
6. The gross pension amount actually paid to a retired member.
7. The most recent retirement date.
8. The current account balance for an active or inactive member.
9. The gross long-term disability program benefit actually paid to a member with a disability pursuant to article 2.1 of this chapter.
10. The amount paid to purchase credited service pursuant to section 38-743, 38-744 or 38-745.
11. The amount of credited service purchased pursuant to section 38-743, 38-744 or 38-745.

E. ASRS shall not permit any unredacted record to be inspected that contains a member's social security number, bank account information, address, telephone number, e-mail address, medical records, health insurance information, beneficiary or survivor information or disability information or any information that is protected by any federal or state law.

**38-756. [Outreach education program](#)**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.
7. The development of a creative promotional program using available media outlets.

C. ASRS shall present, either in person or through the use of electronic means, the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

### 38-757. Normal retirement

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date. Except as provided in section 13-713, a member's right to the member's normal retirement benefit as described in subsection B of this section is nonforfeitable by an employer or ASRS on attainment of the member's normal retirement date.

B. Except as provided in section 38-768, a member who meets the requirements for retirement benefits at normal retirement shall receive a straight life annuity that equals the result of paragraph 1 of this subsection multiplied by paragraph 2 of this subsection when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) 2.10 percent if the member does not have more than 19.99 years of credited service.

(b) 2.15 percent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 percent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 percent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

### 38-758. Early retirement

A. A member who has attained age fifty, who has terminated employment with all employers and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. For a member whose membership in ASRS commenced before July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three percent for each unit of one or fraction of one by which the sum is less than eighty.

C. For a member whose membership in ASRS commenced on or after July 1, 2011, the benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 at the rate of three percent per year from age sixty to age sixty-five and five percent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this subsection for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixty-second birthday if the member has at least ten years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

#### 38-759. Late retirement; definition

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the member's required beginning date.

C. For the purposes of this section, "required beginning date" has the same meaning prescribed in section 38-775.

#### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor life annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's

effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the life annuity of the member under the same joint and survivor life annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted life annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor life annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor life annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

#### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection E.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

#### **38-763. Survivor benefits after retirement**

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits distributed by ASRS. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

#### **38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. All retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.
2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. Except as provided in subsection D of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement

benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

D. The board may pay the entire retirement benefit in a lump sum pursuant to subsection C of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

E. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783 but is not eligible for a benefit increase pursuant to section 38-767.

F. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

G. Notwithstanding subsection H of this section, a member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

H. A member may elect to make changes to a retirement application before the member's retirement date. A member may exercise a onetime election to make changes to the retirement application within sixty days after the member's retirement date. The member may not change the member's retirement date, and any changes made to the retirement application are retroactive to the member's retirement date.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

#### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### **38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.
2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A retired member whose retirement benefits have been suspended pursuant to subsection A of this section shall repay ASRS any retirement benefits received by the member from the date ASRS notifies the member in writing that the member's employment resulted in active membership in ASRS pursuant to subsection A of this section, from the date ASRS determines that the member knew or should have known that the member's employment resulted in membership in ASRS pursuant to subsection A of this section or for any other period that approximates the duration of the violation, as determined by ASRS.

C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

- (a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

- (b) Allows a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

E. A retired member who returns to work pursuant to subsection D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. An employer that engaged the retired member to work pursuant to this section shall pay to ASRS an amount equal to the rate established by the actuary pursuant to section 38-766.02, subsection B for the period starting with the first day the retired member began working after retirement through the earlier of:

1. The date the member terminates employment.
2. The date the member resumes active membership pursuant to subsection A of this section and the member and employer are required to make contributions pursuant to section 38-736, 38-737 or 38-738.

**38-766.01. Retired members; return to work**

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated direct employment with an employer at least three hundred sixty-five consecutive days before returning to work.
3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. Notwithstanding section 38-766 and subsection A of this section, at a retired member's election, a retired member may return to work as a state elected official who is subject to term limits and still be eligible to receive retirement benefits.

C. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

D. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days after returning to work.

E. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

F. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

**38-766.02. Retired members; return to work; employer contribution payments; exception; definitions**

A. Notwithstanding section 38-766.01, subsection E, beginning July 1, 2012, an employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work with an ASRS employer in any capacity in a position ordinarily filled by an employee of the employer or in a position that is similar in duties and responsibilities to that of a position ordinarily filled by an employee of the employer. This subsection applies to a retired member who has reached a normal retirement age or a retired member who retired under section 38-758 if the retired member's retirement benefit has not been suspended pursuant to section 38-766.

B. The ASRS actuary shall determine the alternate contribution rate in an annual valuation performed as of June 30. For the fiscal year beginning on July 1 of the following calendar year, the valuation shall determine the percentage to be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than two percent in any fiscal year. The alternate contribution rate is equal to the lesser of:

1. The employer contribution rate established by the ASRS actuary pursuant to section 38-737 plus the employer contribution rate established by the ASRS actuary pursuant to section 38-797.06.

2. The total past service funding requirement rate established by the ASRS actuary pursuant to section 38-737 plus the total past service funding requirement rate established by the ASRS actuary pursuant to section 38-797.06.

D. ASRS shall determine the schedule and method of payment of the alternate contribution rate. Subject to section 38-738, subsection A, all contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay the expenses of ASRS. Payments made pursuant to this section by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments as prescribed in section 38-711. ASRS may recover delinquent payments due under this section, together with interest charges as provided in this section, by action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, ASRS may deduct the delinquent payments and interest charges from any other monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

E. An employer of a retired member shall submit any reports, data, paperwork or materials that are requested by ASRS and that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, utilization, efficacy or operation of the return to work program.

F. An employer is not required to pay contributions at an alternate contribution rate on behalf of a retired member under subsection A of this section if the retired member returns to work with the employer in a position that is currently filled by an employee of the employer who is an active member and for which the employer is currently required to pay and is paying contributions on behalf of the active member in that same position pursuant to sections 38-736 and 38-737. An employer may pay contributions at an alternate contribution rate for a retired member who meets the requirements for an exemption under this subsection.

G. For contributions made pursuant to subsection F of this section beginning July 1, 2019, if ASRS and the employer determine that the alternate contribution rate does not apply to a retired member who returns to work for whom the employer has paid contributions at the alternate contribution rate,

the employer may request an employer credit, not including interest, for those contributions within ninety days after the end of the fiscal year in which the contributions were paid. If ASRS determines that an employer credit is not feasible, ASRS shall issue a refund to an employer in a form determined by ASRS.

H. For the purposes of this section:

1. "Contract fee" means the gross amount paid to a retired member as an independent contractor minus an amount, not to exceed ten percent, for an administrative fee.
2. "Gross salary" means the gross amount paid to a retired member by a leasing company as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered or that would have been paid to the retired member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes.

**38-767. Benefit increases: applicability**

A. For a member whose membership commenced before the effective date of this amendment to this section, effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which

an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.
3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.
4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member who was eligible for an annual benefit increase pursuant to subsection A of this section had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:

1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.
2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.
3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined

contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

**38-768. Minimum retirement benefit**

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members, is \$600.
2. For beneficiaries, is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection C is not eligible for a minimum benefit as provided by this section.

**38-769. Maximum retirement benefits; termination; definitions**

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit payable in the form of a straight life annuity, at any time within a limitation year, shall not exceed one hundred sixty thousand dollars or a larger amount that is effective as of January 1 of each calendar year, is prescribed by the board and is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this subsection as of the effective date of the increase as prescribed by the United States secretary of the treasury. Benefit increases provided in this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001 shall be provided to all current and former members who have benefits that are limited by section 415(b) of the internal revenue code and who have an accrued benefit under ASRS immediately before July 1, 2001, other than an accrued benefit resulting from a benefit increase solely as a result of the increases provided by this section resulting from the increase in the limitations of section 415(b) of the internal revenue code as amended by the economic growth and tax relief reconciliation act of 2001.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If the member's benefit under ASRS commences before the member reaches sixty-two years of age, the benefit will be limited to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for early retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity start date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-two and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-two, determined without applying the limitations of section 415 of the internal revenue code.

3. If the retirement benefit under ASRS commences after the member reaches sixty-five years of age, the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section on that benefit is increased to:

(a) If the annuity starting date is in a limitation year beginning before July 1, 2007, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) as adjusted under section 415(d) of the internal revenue code, with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for determining actuarial equivalence for delayed retirement purposes.

(ii) A five per cent interest rate assumption and the applicable mortality table.

(b) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS does not have an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, with actuarial equivalence computed using a five per cent interest rate assumption and the applicable mortality table and expressing the member's age based on completed calendar months as of the annuity starting date.

(c) If the annuity starting date is in a limitation year beginning on or after July 1, 2007 and ASRS has an immediately commencing straight life annuity payable at both age sixty-five and the age of benefit commencement, the lesser of:

(i) The adjusted dollar limitation determined in accordance with subdivision (b) of this paragraph, determined without applying the limitations of section 415 of the internal revenue code.

(ii) The product of the dollar limitation under section 415(b)(1)(A) of the internal revenue code as adjusted in subsection A of this section, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under ASRS at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under ASRS at age sixty-five, determined without applying the limitations of section 415 of the internal revenue code.

4. For purposes of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) of the internal revenue code must be adjusted to an actuarially equivalent straight life annuity that equals either:

(a) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity, if any, payable under ASRS at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five per cent and the applicable mortality table under section 417(e)(3) of the internal revenue code.

(b) For limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five per cent interest rate assumption and the applicable mortality table.

5. For the purpose of applying the limits of section 415 of the internal revenue code, a retirement benefit that is payable in any form other than a straight life annuity to which section 417(e)(3) of the internal revenue code would apply if that section of the internal revenue code were applicable to ASRS must be adjusted to an actuarially equivalent straight life annuity that equals:

(a) If the annuity starting date is in a plan year beginning on or after July 1, 2006, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest rate assumption and the applicable mortality table.

(iii) The applicable interest rate under section 417(e)(3) of the internal revenue code and the applicable mortality table, divided by 1.05. The stability period during which the applicable interest rate remains constant is the plan year. The look-back month that is used to determine the applicable interest rate during the stability period is the third full calendar month preceding the first day of the stability period. For the purposes of this item, "applicable interest rate" means the annual interest rate on thirty-year treasury securities as specified by the commissioner of the United States internal revenue service for a month in revenue rulings or notices or another guidance published by the commissioner in the internal revenue bulletin.

(b) If the annuity starting date is in a plan year beginning in July 1, 2004 or July 1, 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount:

(i) The interest rate and mortality table or other tabular factor specified by the board for adjusting benefits in the same form.

(ii) A five and one-half per cent interest assumption and the applicable mortality table.

(c) If the annuity starting date is on or after July 1, 2004 and before December 31, 2004, and ASRS applies the transition rule in section 101(d)(3) of the pension funding equity act of 2005 in lieu of the rule in subdivision (b) of this paragraph, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined in accordance with internal revenue service notice 2004-78.

6. When calculating the limitations of paragraph 4 or 5 of this subsection, the portion of any joint or survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code shall be disregarded.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient developing a disability by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection. All benefits payable pursuant to this subsection shall comply with the limitations of benefits contained in section 415 of the internal revenue code and the final treasury regulations issued under that section. Notwithstanding any provision of this article to the contrary, if the annual benefits within the meaning of section 415 of the internal revenue code for any member exceed the limits of section 415(b) of the internal revenue code and this section, ASRS may only correct the excess pursuant to the employee plans compliance resolution system prescribed in internal revenue service revenue procedure 2008-50 or any future guidance by the internal revenue service, including the preamble of the final treasury regulations issued under section 415 of the internal revenue code.

F. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

G. In determining the adjustments to the defined benefit dollar limitation authorized by subsection A of this section, the board shall prescribe a larger defined benefit dollar limitation if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the defined benefit dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new defined benefit dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment.

H. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 or 38-771.01 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

I. On termination or partial termination of ASRS, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

J. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:

1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

K. For the purposes of subsection J of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

L. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In

addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

M. For the purposes of this section:

1. The following adjustments shall be made to the definition of compensation prescribed in subsection O of this section:

(a) Compensation shall be adjusted for the types of compensation that are prescribed in this paragraph and that are paid after a member's severance from employment with an employer. Amounts described in subdivisions (b), (c) and (d) of this paragraph may be included only as compensation to the extent the amounts are paid by the later of two and one-half months after severance from employment or by the end of the limitation year that includes the date of the severance from employment. Any other payment of compensation paid after severance of employment that is not described in the types of compensation prescribed in this paragraph is not considered compensation for purposes of this section, even if payment is made within the time period prescribed in this subdivision.

(b) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services performed during the member's regular working hours or compensation for services performed outside the member's regular working hours, such as overtime or shift differential, commission, bonus or other similar payments, and the payment would have been paid to the member before a severance from employment if the member had continued in employment with the employer.

(c) Leave cash-outs shall be included in compensation if those amounts would have been included in compensation if they were paid before the member's severance from employment and the amounts are payment for unused accrued bona fide sick, vacation or other leave, but only if the member would have been able to use the leave if employment had continued.

(d) Deferred compensation shall be included in compensation if the compensation would have been included in compensation if it had been paid before the member's severance from employment and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the member had continued in employment with the employer and only to the extent that the payment is includable in the member's gross income.

(e) Compensation does include payments to an individual who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(f) Compensation does not include compensation paid to a member who is a person with a permanent and total disability as defined in section 22(e)(3) of the internal revenue code.

(g) Compensation shall include amounts that are includable in the gross income of a member as required by section 409A or section 457(f)(1)(A) of the internal revenue code or because the amounts are constructively received by the member.

2. Compensation for a limitation year shall not include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates.

3. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate a member for lost wages are compensation for the limitation year to which the back pay relates, but only to the extent the payments represent wages and compensation that would otherwise be included in compensation under this section.

N. The definition of limitation year prescribed in subsection O of this section may only be changed by an amendment to subsection O, except that if ASRS is terminated effective as of a date other than the last day of the limitation year, the termination shall be treated as if this section has been amended to change the definition of limitation year.

O. For the purposes of this section:

1. Annual additions shall be determined as provided in section 38-747, subsection O.

2. "Annual benefit" means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate as prescribed in subsection C, paragraph 5 of this section.

3. "Applicable mortality table" means the mortality table described in internal revenue service revenue ruling 2001-62.

4. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation also includes any elective deferral as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an

employer at the election of a member and that is not includable in the gross income of the member by reason of section 125, 132(f)(4) or 457 of the internal revenue code. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, qualified transportation fringe benefits as defined in section 132 of the internal revenue code and, effective for plan years beginning from and after December 31, 1987, any amounts under section 125 of the internal revenue code that are not available to a member in cash in lieu of group health coverage because the member is unable to certify that the member has other health coverage.

5. "Defined benefit dollar limitation" means the dollar limitation determined under subsection A of this section.

6. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

7. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

8. "Limitation year" and "years of service" mean the fiscal year.

### 38-770. [Eligible rollover distribution: definitions](#)

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections allowed in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D,

paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) Beginning January 1, 2008, a Roth individual retirement account described in section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account that satisfies the requirements of section 408(p) of the internal revenue code.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion

consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

**38-771. Benefit options for transferred defined contribution program members: definitions**

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.
2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by

section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

38-771.01. Alternative benefits for transferred defined contribution program members; definitions

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.

(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.

3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.

E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747,

subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June 30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747,

subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.
2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.
3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.
4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.
5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.
6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this

section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:

1. "Beneficiary" means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. "Member's employer" means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.

5. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.

6. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.

7. "Retirement account" means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.

8. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

#### 38-772. Prior service under defined contribution program administered by ASRS; definitions

A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.

B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.

C. For the purposes of this section:

1. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

2. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

#### 38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of the board's acceptance of the domestic relations order, and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall:

1. Not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.
2. Value the member's benefit on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.
2. The name and last known mailing address of each alternate payee who is covered by the order.
3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.
4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.
2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.
2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. If an alternate payee predeceases the member, amounts payable to the alternate payee cease on the death of the alternate payee. ASRS shall cause the amount formerly payable to the alternate payee to revert to the member.

H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

### 38-774. Excess benefit arrangement

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

### 38-775. Required distributions: definitions

A. This section applies for purposes of determining required minimum distributions for calendar years beginning on and after January 1, 2006. In applying the requirements of this section, the following operational provisions govern:

1. Except as provided in the following sentence, the requirements of this section take precedence over any inconsistent provisions of this article and article 2.1 of this chapter. The rules of this section shall not restrict any form, calculation, adjustment or payment of benefit provided under this article in effect on April 17, 2002, if the form, calculation, adjustment or payment of benefit satisfied section 401(a)(9) of the internal revenue code based on a reasonable and good faith interpretation of that section.

2. All distributions required under this section shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

3. Notwithstanding this section, other than paragraph 2 of this subsection, distributions may be made under a designation made before January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal responsibility act of 1982 (P.L. 97-248) and the provisions of this article that relate to that section.

B. The member's entire interest shall be distributed, or begin to be distributed, to the member not later than the member's required beginning date.

C. If the member dies before distributions begin, the member's entire interest shall be distributed, or begin to be distributed, not later than as follows:

1. If the member's surviving spouse is the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained seventy-two years of age, if later.

2. If the member's surviving spouse is not the member's sole designated beneficiary, except as provided in paragraph 4 of this subsection, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died.

3. For purposes of this subsection and subsection G of this section, distributions are considered to begin on the member's required beginning date or the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection. If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse under paragraph 1 of this subsection, the date distributions are considered to begin is the date distributions actually commence.

4. If the member dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date prescribed in paragraph 1 or 2 of this subsection as long as the member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the member's death. If the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies after the member but before distributions to either the member or the surviving spouse begin, this paragraph applies as if the surviving spouse were the member.

D. Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made pursuant to subsections E, F and G of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions shall be made pursuant to the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the internal revenue code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury that apply to individual accounts.

E. The following provisions govern the determination of the amount to be distributed each calendar year:

1. If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year.

(b) The distribution period shall be over a life or lives or over a period certain not longer than the period described in subsection F or G of this section.

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum allowed.

(d) Payments shall either be nonincreasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the bureau of labor statistics.

(ii) To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit on death, but only if the beneficiary whose life was being used to determine the distribution period described in subsection F of this section dies or is no longer the member's beneficiary

pursuant to a qualified domestic relations order within the meaning of section 414(p) of the internal revenue code.

(iii) To provide cash refunds of employee contributions on the member's death.

(iv) To pay increased benefits that result from a plan amendment.

2. The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection C, paragraph 1 or 2 of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, such as bimonthly, monthly, semiannually or annually. All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

3. Any additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

F. The following provisions govern annuity distributions that commence during a member's lifetime:

1. If the member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary, annuity payments to be made on or after the member's required beginning date to the designated beneficiary after the member's death must not at any time exceed the applicable percentage of the annuity payment for the period that would have been payable to the member using the table set forth in question and answer number 2 of section 1.401(a)(9)-6 of the regulations issued by the United States secretary of the treasury. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence applies to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the member reaches seventy years of age, the applicable distribution period for the member is the distribution period for seventy years of age under the uniform lifetime table set forth in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury plus the excess of seventy over the age of the member as of the member's birthday in the year that contains the annuity starting date. If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the joint and last survivor table prescribed in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

G. The following provisions govern minimum distributions if a member dies before the date distributions begin:

1. Except as provided in subsection C, paragraph 4 of this section, if the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning not later than the time prescribed in subsection C, paragraph 1 or 2 of this section, over the life of the designated beneficiary or over a period certain not exceeding either of the following:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death.

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

2. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

3. If the member dies before the date distribution of the member's interest begins, the member's surviving spouse is the member's sole designated beneficiary and the surviving spouse dies before distributions to the surviving spouse begin, this subsection applies as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection C, paragraph 1 of this section.

H. If a member dies after the member's required beginning date and the member had not commenced distribution of retirement benefits, ASRS shall treat the member as having commenced distribution of retirement benefits on the member's required beginning date. Notwithstanding section 38-776, ASRS shall determine the member's retirement benefit as a straight annuity as of the date of the member's required beginning date. The member's estate is entitled to the member's benefit payments and any remaining member contributions on account shall be disbursed pursuant to section 38-763.

I. For the purposes of this section:

1. "Designated beneficiary" means the individual who is designated as the member's beneficiary to receive benefits under this article and is the designated beneficiary under section 401(a)(9) of the internal revenue code and question and answer number 1 of section 1.401(a)(9)-4 of the regulations issued by the United States secretary of the treasury.

2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection C of this section.

3. "Life expectancy" means life expectancy as computed by use of the single life table in section 1.401(a)(9)-9 of the regulations issued by the United States secretary of the treasury.

4. "Required beginning date" means the date payment of a member's benefits shall commence in accordance with section 401(a)(9)(C) of the internal revenue code.

### 38-776. Spousal waiver and consent

A. A member's current spouse may consent to one of the following requirements established in section 38-755 or 38-760 by signing and submitting an acknowledgement in a manner established by ASRS:

1. A change of beneficiary that provides the member's current spouse with less than fifty per cent of the member's account balance.

2. The member's retirement application that does not name the member's current spouse as a contingent annuitant of a joint and survivor annuity.

3. A change or rescission of the member's current spouse's contingent annuitant status.

B. If the member's current spouse is not capable of executing the acknowledgement because of an incapacitating mental or physical condition, a power of attorney or guardian may execute the acknowledgment on the current spouse's behalf.

C. The member may affirm in writing under penalty of perjury in a manner determined by ASRS that spousal consent is not required because of one of the following reasons:

1. The member is not married.

2. The member's current spouse has no identifiable community property interest in the member's benefits.

3. The member does not know, and has taken all reasonable steps to determine, the location of the member's current spouse.

4. The member has received notification from the board that a domestic relations order is acceptable pursuant to section 38-773 and that domestic relations order requires ASRS to pay benefits to an alternate payee that is contrary to the requirements of section 38-760.

5. Obtaining consent violates another law, an existing contract or a court order.

D. This section does not abrogate any community property laws of this state.

E. Payments or distributions made by ASRS in good faith reliance on the consent or waiver of a member's current spouse, the affirmations of a member contained in documents submitted to ASRS pursuant to this section or the member's indication to ASRS that the member is not married constitute a full and complete discharge and release of all liability of the board or ASRS, or both, respecting these payments or distributions.

F. If questions arise as to the distribution of a particular member's account, ASRS shall use reasonable judgment to distribute the account in a manner that is consistent with Arizona community property laws and interpretations of those laws.

38-781. Supplemental employee deferral plan; public employees; administration; immunity; definitions

A. One or more supplemental employee deferral plans may be established pursuant to this section to provide public employees an opportunity to save additional tax-deferred monies for retirement.

B. ASRS may establish, administer, manage and operate supplemental employee deferral plans for employers.

C. ASRS may:

1. Employ services it deems necessary, including legal services, for the operation and administration of the plans.

2. Administer the plans through contracts with multiple vendors.

3. Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plans.

4. For the purposes of this section, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

D. A supplemental employee deferral plan does not replace an employee's existing state defined benefit retirement plan.

E. If an employer, including this state, elects to participate in a supplemental employee deferral plan, any employee of the employer who meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan may participate in the supplemental employee deferral plan.

F. Notwithstanding subsection E of this section, on or after July 1, 2022, an employee of an employer who is not eligible to participate in a public retirement system established by article 3, 3.1, 4, 4.1 or 6 of this chapter may elect to participate in a supplemental employee deferral plan if the employee meets the eligibility requirements that are prescribed by ASRS for participation in the supplemental employee deferral plan.

G. Employee participation in a supplemental employee deferral plan requires the participant's employer to make salary reductions from the participant's compensation at no cost to the employee, ASRS or any vendor retained by ASRS and contribute such salary reductions to the plan. An employer may make employer contributions to the supplemental employee deferral plan if the plan allows. The employer shall submit any reports required by the plan. If the participant is an active member, any compensation deferred by an employee under a plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits provided in this article earned by any employee participating in the plan.

H. Employee contributions and earnings on employee contributions are immediately vested. Employer contributions, if any, and the earnings on employer contributions shall vest according to the schedule established by the employer, if the employer completes and submits a schedule to ASRS. If the employer does not complete and submit a schedule to ASRS, employer contributions, if any, and the earnings on employer contributions shall vest according to the default schedule established by ASRS.

I. Notwithstanding any other law, this state and its officers and employees, the board and ASRS are immune from civil liability and are not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury arising out of the supplemental employee deferral plan.

J. A political subdivision or a political subdivision entity that is not participating in ASRS may elect to allow its employees to participate in a supplemental employee deferral plan that is overseen by ASRS pursuant to this section by entering into an agreement with ASRS. A political subdivision or political subdivision entity that elects to allow its employees to participate in a supplemental employee deferral plan pursuant to this subsection:

1. Is not an employer for the purposes of this article and its employees are not members for the purposes of this article.

2. May not provide any information indicating or implying that the political subdivision or political subdivision entity offers any ASRS benefits other than participation in a supplemental employee deferral plan pursuant to this subsection. A political subdivision or political subdivision entity that violates this paragraph may not elect to allow new employees to participate in a supplemental employee deferral plan pursuant to this subsection until the violation is corrected at the discretion of ASRS.

3. May elect to join ASRS pursuant to section 38-729.

K. For the purposes of this section:

1. "State" means this state, including any department, office, board, commission, agency or university, but does not mean any school district or community college district.

2. "Supplemental employee deferral plan" means a tax deferred annuity described in section 403(b) of the internal revenue code, including a custodial account described in 403(b)(7) of the internal revenue code, and an eligible deferred compensation plan described in section 457(b) of the internal revenue code. A supplemental employee deferral plan shall comply with all applicable provisions of the section of the internal revenue code under which such plan is adopted and maintained.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not

use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to

subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents: definition**

A. The board shall establish group health and accident coverage for eligible retired members, surviving dependents and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to provide benefits and to pay the administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783 unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be used to provide any remaining benefits and to pay administration costs for the self-insurance program pursuant to this section or the premium payments pursuant to section 38-783. If the liabilities of ASRS to provide the benefits under the self-insurance program and the premium payments pursuant to section 38-783 are satisfied, the board shall return any remaining monies in the account to the employer. If an insured retired member or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, the elected officials' retirement plan, the elected officials' defined contribution retirement

system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired members, surviving dependents and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve-month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve-month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired members, surviving dependents or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their

provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

I. A retired member of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter may elect to obtain the coverage provided pursuant to subsection A of this section, but shall pay the premium for the coverage selected and is not eligible for benefits pursuant to section 38-783 or 38-817.

J. For the purposes of this section, "eligible retired member, surviving dependent and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

[38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions](#)

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to \$215 per month if either:
  - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
  - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.
5. 5.0 to 5.9 years of credited service, fifty percent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if

the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

- (a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

- (b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement

increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

### 38-791. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 8-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-792. Exemptions from execution, attachment and taxation; exception

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

#### 38-793. Violation: classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

#### 38-794. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.
2. "Assets" means the accumulated resources of the LTD program.
3. "Board" means the ASRS board established pursuant to section 38-713.
4. "Compensation" has the same meaning prescribed in section 38-711.
5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.
6. "Employer" has the same meaning prescribed in section 38-711.
7. "Employer contributions" means all amounts paid into the LTD program by an employer.
8. "Fiscal year" has the same meaning prescribed in section 38-711.
9. "LTD program" means the long-term disability program established by this article.
10. "Member" has the same meaning prescribed in section 38-711.
11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member

develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

#### 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

#### 38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

#### 38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

#### 38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

#### 38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

#### 38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines

pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is \$50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it

includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

#### 38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

#### 38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

#### 38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

#### 38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

#### 38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

#### 38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

#### 38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

#### 38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing or has contributed.

B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

### **38-922. Transfer or redemption of service credits**

A. Service credits qualified in accordance with section 38-730 or 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. If a system's or plan's market value is greater than one hundred per cent, the system or plan shall use a one hundred per cent market value.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn the applicant's member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which the applicant is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

[38-923. Transfer of service credits between municipal retirement systems and special retirement plans: definitions](#)

A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system

or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

C. An active or inactive member of a retirement system or plan of a municipality of this state or of the elected officials' retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:

1. The board governing the retirement system or plan from which the service credits are being transferred and the board governing the retirement system or plan to which the service credits are being transferred approve the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board of the retirement system or plan to which the member is contributing.

D. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.

2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the retirement system or plan.

(c) Is not currently making contributions to the retirement system or plan.

(d) Has not withdrawn contributions from the retirement system or plan.

3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

#### 38-924. Transfer of service credits

A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:

1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.

2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.

C. If a member decides to transfer:

1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection B, paragraph 1 of this section. If the amount calculated in subsection B, paragraph 2 of this section is greater than the amount determined in subsection B, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection B, paragraph 1 of this section to the amount calculated under subsection B, paragraph 2 of this section.

2. If the amount calculated in subsection B, paragraph 2 of this section is less than or equal to the amount determined in subsection B, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection B, paragraph 1 of this section.

D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

**C-12**

**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS  
AND ASSISTED LIVING FACILITY MANAGERS**

Title 4, Chapter 33

**Amend:** R4-33-104



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 14, 2024

**SUBJECT:** **BOARD OF EXAMINERS OF NURSING CARE INSTITUTION  
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**  
Title 4, Chapter 33

**Amend:** R4-33-104

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### **Summary:**

This regular rulemaking from the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) seeks to amend one (1) rule in Title 4, Chapter 33, Article 1 related to Fees. Specifically, the Board is proposing a 22% fee increase to remedy an anticipated fund deficiency and allow for an increased budget appropriation to fund a future Investigator full-time employee. The Board indicates it has not requested or implemented a fee increase in over 10 years.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Board cites both general and specific statutory authority for these rules.

**2. Do the rules establish a new fee or contain a fee increase?**

The Board is proposing a 22% fee increase to fees outlined in R4-33-104. As a reminder, pursuant to A.R.S. § 41-1052(E), the Council “shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule.”

**3. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board indicates it did not review any study relevant to this rulemaking.

**4. Summary of the agency’s economic impact analysis:**

The rulemaking proposes a 22% increase in existing fees for the approval and renewal of training programs for nursing care institution administrators and assisted living facility managers. The Board determined that such an increase is necessary to ensure sufficient funds to carry out its statutory requirements. Ten percent of the increased fees will go to the state’s general fund. To reduce the economic impact of the rules as originally proposed, the Board reduced the number of training hours required to be an assisted living facility caregiver and expanded the number of individuals qualified to serve as a training program instructor.

**5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

Because most of the businesses directly affected by the rulemaking are small businesses, no less intrusive or less costly alternative methods could be considered and still enable the Board to generate revenue sufficient to support its statutory responsibilities.

**6. What are the economic impacts on stakeholders?**

Providers of assisted living facility training programs will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The affected institutions will benefit from the Board being able to continue fulfilling its statutory responsibilities. Additionally, the basis on which the fee charged to review sponsorship of a continuing education is changed from a fee per continuing education to a fee per credit hour. This will result in increased fees for review of sponsorship of most continuing education.

**7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Board indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

**8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Board indicates it received no public comments in opposition to this rulemaking.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Board states it issues general permits to licensees who meet the criteria established in statute and rule. As such, Council staff believes the Board is in compliance with A.R.S. § 41-1037.

**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Board indicates there is no federal law applicable to these rules.

**11. Conclusion**

This regular rulemaking from the Board seeks to amend one (1) rule in Title 4, Chapter 33, Article 1 related to Fees. Specifically, the Board is proposing a 22% fee increase to remedy an anticipated fund deficiency and allow for an increased budget appropriation to fund a future Investigator full-time employee. The Board indicates it has not requested or implemented a fee increase in over 10 years.

Pursuant to A.R.S. § 41-1052(E), the Council “shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule.”

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



**Board Of Examiners Of Nursing Care Institution Administrators and  
Assisted Living Facility Managers**

1740 W. Adams Street, Suite 2490 Phoenix, Arizona 85007

**Katie Hobbs**  
Governor

(602) 364-2273 phone  
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**Jack Confer**  
Executive Director

February 23, 2024

Ms. Nicole A. Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 402  
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations, Chapter 33. Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers**

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on January 8, 2024 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking relates to a Five-year Review Report approved by the Council in February 2012.
3. New fee or fee increase: This rulemaking does not establish a new fee; however increases existing fees.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Executive Director;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Respectfully,

  
Jack Confer  
Executive Director

**NOTICE OF FINAL RULEMAKING  
TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION  
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**

**PREAMBLE**

- |   |                                 |
|---|---------------------------------|
| <b><u>1. Articles, Parts, and Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-33-104   | Amend                           |
  
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  

Authorizing statute:	A.R.S. § 36-446.03
Implementing statutes:	A.R.S. §§ 36-446 et seq.
  
- 3. The effective date for the rules:**
  - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
None
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
None
  
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 29 A.A.R. 3723, December 8, 2023  
Notice of Proposed Rulemaking: 29 A.A.R. 3734, December 8, 2023
  
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: John Confer, Executive Director  
Address: Arizona Board of Nursing Care Institution Administrators  
and Assisted Living Facility Managers  
1740 W. Adams St., Ste. 2490  
Phoenix, AZ 85007  
Telephone: (602) 542-8156  
E-Mail: [john.confer@aznciboard.us](mailto:john.confer@aznciboard.us)
  
- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The Board needs to amend its rules to update its fees.

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

No study was reviewed.

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

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. However, the 22% increase in most fees will have a small financial impact on the regulated community. Thus, the economic impact is minimized.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

Not applicable

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The Board did not receive any comments in opposition of the rules.

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

None.

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION  
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**

**ARTICLE 1. GENERAL**

Section

R4-33-104. Fees

## ARTICLE 1. GENERAL

### R4-33-104. Fees

A. Under the authority provided at A.R.S. § 36-446.12(A), the Board establishes and shall collect the following fees related to nursing care institution administrators. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, ~~\$150~~\$183;
2. Arizona examination, ~~\$500~~\$610;
3. Re-administer Arizona examination, ~~\$150~~\$183;
4. Issuance of a license, ~~\$400~~ \$488 or ~~\$17~~ \$20.33 for each month remaining in the biennial period, whichever is less;
5. Duplicate license, ~~\$75~~\$91.50;
6. Biennial active license renewal, ~~\$400~~\$488;
7. Biennial inactive license renewal, ~~\$200~~\$244;
8. Late renewal, ~~\$100~~\$122;
9. Temporary license, ~~\$300~~\$366;
10. Certify licensure status, ~~\$15~~\$18.30;
11. Review sponsorship of a continuing education, ~~\$10~~\$12.20 per credit hour;
12. Review a licensed administrator's request for continuing education credit, ~~\$5~~ \$6.10 per credit hour.

B. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to assisted living facility managers. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, ~~\$150~~\$183;
2. Arizona examination, ~~\$150~~\$183;
3. Re-administer Arizona examination, ~~\$150~~\$183;
4. Issuance of a certificate, ~~\$150~~\$183 or ~~\$7~~ \$7.63 for each month remaining in the biennial period, whichever is less;
5. Duplicate certificate, ~~\$75~~\$91.50;
6. Biennial active certificate renewal, ~~\$150~~\$183;
7. Biennial inactive certificate renewal, ~~\$100~~\$122;
8. Late renewal, ~~\$75~~\$91.50;

9. Temporary certificate, ~~\$100~~\$122;
  10. Review sponsorship of a continuing education, ~~\$10~~\$12.20 per credit hour;
  11. Review a certified manager's request for continuing education credit, ~~\$5~~ \$6.10 per credit hour.
- C.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility manager training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, ~~\$1,000~~\$1,220; and
  2. Renewal approval, ~~\$600~~\$732.
- D.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, ~~\$1,500~~\$1,830; and
  2. Renewal approval, ~~\$1,300~~\$1,586.
- E.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver medication management training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, ~~\$300~~\$366; and
  2. Renewal approval, ~~\$250~~\$305.
- F.** The Board shall ensure that fees established under this subsection are not increased by more than 25 percent above the amounts previously prescribed by the Board.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION**

**ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS**

1. Identification of the rulemaking:

The Board approved a 22% fee increase at its' July 10, 2023 public Board Meeting. The increase was approved to remedy an anticipated fund deficiency and allow for an increased budget appropriation to fund a future Investigator FTE. The Board has not requested or implemented a fee increase in over 10 years.

The Board currently licenses 339 nursing care institution administrators and certifies 2,185 assisted living facility managers. In addition, the Board has approximately 43 caregiver training programs and 17 Assisted Living Manager Training Programs. It collected approximately \$630,000 in fees last year and was appropriated \$604,900. Its current appropriation is \$377,700. The Board is a self-supporting (funded) 90/10 agency and transfers 10% of a revenue collected to the General Fund.

The Board expects the fee increases to generate the following amounts:

<b>FEE</b>	<b>AMOUNT OF INCREASE</b>	<b>NUMBER TO BE COLLECTED</b>	<b>COLLECTED INCREASE</b>
Administrator/Manager's Initial application	\$33	387	\$12,771
Administrator's License Initial Issuance	\$88 or 20.33 prorated per month	20	\$1,760
Administrator Initial Arizona Examination	\$110	20	\$2,200
Administrator Re-examination	\$33	5	\$165
Manager's certificate issuance	\$33 or 7.63 prorated per month	250	\$8,250
Duplicate Administrator License or Manager Certificate	\$16.50	227	\$3,745.5

Administrator License Renewal	\$88 biennially	339	\$29,832
Administrator Inactive Renewal	\$44	10	\$440
Administrator Temporary License	\$66	20	\$1320
Administrator License Verification	\$3.30	10	\$33
Manager Examination	\$33	275	\$9075
Manager Re-Examination	\$33		
Manager's active certificate renewal	\$33 biennially	1975	\$36053
Manager's inactive certificate renewal	\$22	20	\$440
Administrator's late renewal fee	\$22	10	\$220
Manager's late renewal fee	\$16.50	20	\$330
Temporary license/ certificate	\$22	50	\$1,100
License certification	\$5	15	\$75
Review sponsorship of CE	\$2.20/ credit hour	700	\$1540
Individual CE approval	\$2.20/credit hour	400	\$880
Manager Training Program	\$220	5	\$1,100
Manager Training Program Renewal	\$132	17	\$2,244
Caregiver Training Program	\$330	5	\$1,650
Caregiver Training Program Renewal	\$55	43	\$2,365

This means the fee increases will produce approximately \$117,588.55 annually. Ten percent of this amount goes to the state's general fund leaving the Board with \$105,829.70 in additional funds.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Nursing care institution administrators and assisted living facility managers will directly bear the cost of increased licensing and regulatory fees. These fees are a cost of doing business that may be passed to consumers of nursing care institution or assisted living facility services. If a nursing care institution or assisted living facility pays the licensing fees for its administrator or manager, the institution or facility will have increased costs. Administrators and managers and the institutions and facilities at which they work will benefit from the Board being able to continue fulfilling its statutory responsibilities.

The basis on which the fee charged to review sponsorship of a continuing education is changed from a fee per continuing education to a fee per credit hour. This will result in increased fees for review of sponsorship of most continuing education. The fee for review of sponsorship of a continuing education is a cost of doing business as a continuing education provider that may be passed to the nursing care institution administrators and assisted living facility managers required to obtain continuing education.

3. Cost-benefit analysis:

a. Costs and benefits to state agencies directly affected by the rulemaking:

The Board is the only state agency directly affected by this rulemaking. It incurred the cost of completing the rulemaking and will incur the cost of informing licensees of the increased fees. The Board will benefit from being able to continue fulfilling its statutory responsibilities.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:

Nursing care institution administrators, assisted living facility managers, training programs and continuing education providers are the only businesses directly affected by the rulemaking. Their costs and benefits are described in item 2. Nursing care institutions and assisted living facilities may be affected by the rulemaking in the manner described in item 2.

4. Impact on private and public employment:

The rulemaking is expected to have no impact on private or public employment.

5. Impact on small businesses:

Nursing care institution administrators and assisted living facility managers are small businesses. The impact on them is described in item 2. Most nursing care institutions, assisted living facilities, and continuing education providers are also small business. The impact on them is described in item 2.

6. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

Private persons and consumers will not be directly affected by the rulemaking. However, the fee increases are a cost of doing business that likely will be passed to consumers of nursing care institution and assisted living facility services.

7. Probable effects on state revenues:

Ten percent of the increased fees will go to the state's general fund.

8. Less intrusive or less costly alternative methods considered:

Because most of the businesses directly affected by the rulemaking are small businesses, no less intrusive or less costly alternative methods could be considered and still enable the Board to generate revenue sufficient to support its statutory responsibilities.

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION

#### ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

1. Identification of the rulemaking:

During the 2011 session, the legislature enacted SB1038, which transferred regulatory oversight of training programs for assisted living facility managers from the Arizona Department of Health Services to the Board. The Board is charged with establishing standards and approving training programs for managers and caregivers of assisted living facilities; specifically authorized to make nonrefundable fees for review of initial and renewal applications; and authorized to impose discipline if a training program violates the Board's rules. The Board is making the rules necessary to fulfill its statutory responsibility. This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

a. The conduct and its frequency of occurrence that the rule is designed to change:

A.R.S. § 36-446.03(O) requires the Board to make rules prescribing standards for assisted living facility training programs. Until the rules are made, the Board will not be in compliance with this statute. The Board currently is approving training programs using rules developed by the Arizona Department of Health Services.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The Board is not in compliance with A.R.S. § 36-446.03(O) and will continue not to be in compliance until these rules are made.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rules are made, the Board will be in compliance with A.R.S. § 36-446.03(O).

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The primary economic impact results from the legislative decision to require that assisted living facility training programs be approved by the Board. Before the legislature made this decision, it was necessary for training providers to obtain approval from both the Arizona Department of Health Services and the Board for Private Postsecondary Education. The

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

economic impact from these rules results from the requirement that an application for approval be submitted, fees paid, and compliance with requirements designed to ensure that assisted living facility managers and caregivers are trained adequately to care for the fragile individuals entrusted to them.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Allen Imig, Executive Director

Address: 1400 West Washington

Ste. B8

Phoenix, AZ 85007

Telephone: (602) 542-8156

Fax: (602) 542-8316

E-mail: allen.imig@aznciaboard.us

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Providers of assisted living facility training programs will be directly affected by, bear the costs of, and directly benefit from this rulemaking. It is providers of training programs who will have to apply to the Board for approval of training programs, pay fees for approval, ensure that training programs comply with new standards, maintain records, and be subject to oversight and possible discipline by the Board.

The Board established the fees for initial approval and renewal of a training program based on a careful assessment of the time involved to review and act on an application, including conducting a site visit, and the time involved to assist providers to comply with standards for approval. The Board expects to collect approximately \$37,500 in fees during the first year after the rules are implemented. This means that the Board will not collect as much in fees as it spends to implement the program.

Currently, Arizona has 1,709 assisted living homes and 234 assisted living centers, with a total of 29,902 beds. The residents of these homes and centers and their families and friends will be indirectly affected by these rules. The Arizona chapter of the Assisted Living Federation of American estimates that the assisted living industry affects 500,000 to 750,000 individuals in Arizona and has an economic impact measured in millions of dollars.

The Board expects to receive applications from about 15 providers of manager training programs during the first year these rules are in place. It expects 15 to 20 applications from providers of caregiver training programs during the first year and an additional 13 applications in the next five years. There are currently 2,416 certified managers of assisted living facilities in Arizona. The manager of an assisted living center earns approximately \$65,000 annually while the manager of an assisted living home earns \$25,000. Caregivers, who earn between the minimum wage and \$12 per hour, are not required to be licensed so there is no accurate estimate of how many individuals are employed as caregivers. Assisted living facility managers and caregivers will be indirectly affected by these rules.

If, as a result of this rulemaking, providers of assisted living facility training programs increase the cost of participating in an approved training program, the individuals who pay for the training will be indirectly affected by the rulemaking. Paying to obtain required training is a cost of doing business that these individuals may pass to those to whom care is provided.

The Board will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The Board incurred the cost of making the rules and will incur the cost of implementing them. The Board was appropriated \$64,300 with which to employ one person full time to manage oversight of approved assisted living facility training programs. The Board will benefit from having rules that are consistent with statute and current industry standards.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are discussed in item 4. The legislature appropriated \$64,300 for the Board to employ one person full time to manage oversight of training programs.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions are not directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Providers of assisted living facility training programs are the only businesses directly affected by the rulemaking. The costs and benefits of these businesses are discussed in item 4.

6. Impact on private and public employment:

The Board plans to employ one person full time to manage oversight of approved assisted living facility training programs. This is the only impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

a. Identification of the small business subject to the rulemaking:

Providers of assisted living facility training programs are the only businesses directly affected by the rulemaking. The Board believes that most of the providers are small businesses organized either as sole proprietors or limited-liability corporations. The Board estimates that most of the providers operate independently from any assisted living facility.

b. Administrative and other costs required for compliance with the rulemaking:

Costs associated with the rules include making application for initial approval and renewal, paying application fees, and complying with minimum standards including recordkeeping.

c. Description of methods that may be used to reduce the impact on small businesses:

Because most of the businesses impacted by the rules are small businesses and because so few businesses are providers of assisted living facility training programs, it is not possible to reduce the impact on small businesses and have the Board fulfill its statutory responsibilities.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. However, if the cost to participate in an approved assisted living facility training program increases as a result of this rulemaking, the cost may be passed to consumers of assisted living facility care.

9. Probable effects on state revenues:

Under A.R.S. § 36-446.08(B), 10 percent of the monies collected by the Board is deposited in the state's general fund. This means that 10 percent, or approximately \$3,750, of the funds collected to approve assisted living facility training programs will go to the general fund.

10. Less intrusive or less costly alternative methods considered:

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(20).

In response to comments received regarding the Notice of Proposed Rulemaking, the Board made substantive changes to reduce the economic impact of the rules as originally proposed. The Board reduced the number of training hours required to be an assisted living facility caregiver and expanded the number of individuals qualified to serve as a training program instructor. No other less intrusive or less costly alternative methods were considered.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Continuing Education Program Approval R4-33-502 A.R.S. § 36-446.07(E) and (F)	60	15	30	45	15
Administrator-in-Training Program Approval R4-33-301 A.R.S. § 36-446.04	60	15	30	45	15
Initial Certification R4-33-401 A.R.S. § 36-446.04(B)	135	30	90	105	60
Renewal of Certification R4-33-405 A.R.S. § 36-446.07(F)	75	30	15	45	15
Temporary Certification R4-33-402 A.R.S. § 36-446.06	135	30	90	105	60
Initial Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-604, R4-33-704, R4-33-704.1, A.R.S. § 36-446.03(O)	120	60	60	60	60
Renewal Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-605, R4-33-705, R4-33-705.1, A.R.S. § 36-446.03(O)	120	60	30	60	30

**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

**R4-33-104. Fees**

**A.** Under the authority provided at A.R.S. § 36-446.12(A), the Board establishes and shall collect the following fees related to nursing care institution administrators. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, \$150;
2. Arizona examination, \$500;
3. Re-administer Arizona examination, \$150;
4. Issuance of a license, \$400 or \$17 for each month remaining in the biennial period, whichever is less;
5. Duplicate license, \$75;
6. Biennial active license renewal, \$400;
7. Biennial inactive license renewal, \$200;
8. Late renewal, \$100;
9. Temporary license, \$300;
10. Certify licensure status, \$15;
11. Review sponsorship of a continuing education, \$10 per credit hour;
12. Review a licensed administrator’s request for continuing education credit, \$5 per credit hour.

**B.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to assisted living facility managers. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial application, \$150;
2. Arizona examination, \$150;
3. Re-administer Arizona examination, \$150;
4. Issuance of a certificate, \$150 or \$7 for each month remaining in the biennial period, whichever is less;

5. Duplicate certificate, \$75;
6. Biennial active certificate renewal, \$150;
7. Biennial inactive certificate renewal, \$100;
8. Late renewal, \$75;
9. Temporary certificate, \$100;
10. Review sponsorship of a continuing education, \$10 per credit hour;
11. Review a certified manager’s request for continuing education credit, \$5 per credit hour.

**C.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility manager training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial approval, \$1,000; and
2. Renewal approval, \$600.

**D.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial approval, \$1,500; and
2. Renewal approval, \$1,300.

**E.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver medication management training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:

1. Initial approval, \$300; and

## TITLE 4. PROFESSIONS AND OCCUPATIONS

## CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

2. Renewal approval, \$250.

- F. The Board shall ensure that fees established under this subsection are not increased by more than 25 percent above the amounts previously prescribed by the Board.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 805, effective April 13, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 15 A.A.R. 1975, effective November 3, 2009 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective November 10, 2018 (Supp. 18-3).

**R4-33-105. Repealed****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Repealed by final rulemaking at 27 A.A.R. 233, effective April 4, 2021 (Supp. 21-1).

**R4-33-106. Rehearing or Review of Decision**

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Misconduct of the Board, its staff, or an administrative law judge;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive or insufficient penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
  7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall spec-

ify with particularity the grounds on which the rehearing or review is granted.

- G. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days for good cause as described in subsection (H) or by written stipulation of the parties. Reply affidavits may be permitted.
- H. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
  2. Avoid undue prejudice to any party.
- I. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for immediate preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**Historical Note**

Section R4-33-106 renumbered from R4-33-209 and amended by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

**R4-33-107. Change of Name or Address**

- A. The Board shall communicate with an administrator or manager using the name and address in the Board's records. To ensure timely communication from the Board, an administrator or manager shall inform the Board in writing of any change in name or address.
- B. An administrator or manager shall include in a notice of change in name or address either the new and former name or new and former address.
- C. An administrator or manager shall attach to a notice of change in name a copy of the legal document changing the name.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4).

**R4-33-108. Display of License or Certificate**

- A. An administrator shall display the administrator's original license and current renewal receipt in a conspicuous place in the nursing care institution at which the administrator is appointed.
- B. A manager shall display the manager's original certificate and current renewal receipt in a conspicuous place in the assisted care facility at which the manager is appointed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4075, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 543, effective June 6, 2015 (Supp. 15-2).

**R4-33-109. Fingerprint Clearance Card Requirement**

Under A.R.S. § 36-446.04, an administrator or manager is required to maintain a valid fingerprint clearance card during the biennial

### 36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for administering or managing an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
  - (a) Training that is required for assisted living facility manager certification.
  - (b) Training that is required for assisted living facility caregivers and that is either:
    - (i) Consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.
    - (ii) As prescribed in section 36-446.16.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Felony involving violence or financial fraud" means any of the following offenses:
  - (a) Sexual abuse of a vulnerable adult.
  - (b) Homicide, including first or second degree murder, manslaughter or negligent homicide.
  - (c) Sexual assault.
  - (d) Sexual exploitation of a vulnerable adult.
  - (e) Commercial sexual exploitation of a vulnerable adult.
  - (f) Child abuse.

- (g) Abuse of a vulnerable adult.
- (h) Molestation of a child.
- (i) Molestation of a vulnerable adult.
- (j) A dangerous crime against children as defined in section 13-705.
- (k) Neglect or abuse of a vulnerable adult.
- (l) Sexual abuse.
- (m) Causing one's spouse to become a prostitute.
- (n) Detention of persons in a house of prostitution for debt.
- (o) Pandering.
- (p) A felony offense involving domestic violence as defined in section 13-3601 except for a felony offense involving only criminal damage in an amount of more than \$250 but less than \$1,000 if the offense was committed before June 29, 2009.
- (q) Any felony offense in violation of title 13, chapter 12.
- (r) Felony indecent exposure.
- (s) Felony public sexual indecency.
- (t) Terrorism.
- (u) Any offense involving a violent crime as defined in section 13-901.03.
- (v) Aggravated criminal damage.
- (w) Theft.
- (x) Theft by extortion.
- (y) Forgery.
- (z) Criminal possession of a forgery device.
- (aa) Obtaining a signature by deception.
- (bb) Theft of a credit card or obtaining a credit card by fraudulent means.
- (cc) Receipt of anything of value obtained by fraudulent use of a credit card.

(dd) Forgery of a credit card.

(ee) Fraudulent use of a credit card.

(ff) Possession of any machinery, plate or other contrivance or incomplete credit card.

(gg) A false statement as to financial condition or identity to obtain a credit card.

(hh) Fraud by persons authorized to provide goods or services.

(ii) Credit card transaction record theft.

(jj) Adding poison or another harmful substance to food, drink or medicine.

(kk) A criminal offense involving criminal trespass under title 13, chapter 15.

(ll) A criminal offense involving burglary under title 13, chapter 15.

(mm) A criminal offense under title 13, chapter 23, except terrorism.

(nn) A felony offense involving domestic violence as defined in section 13-3601 if the offense involved only criminal damage in an amount of more than \$250 but less than \$1,000 and the offense was committed before June 29, 2009.

(oo) Taking the identity of another person or entity.

(pp) Aggravated taking the identity of another person or entity.

(qq) Trafficking in the identity of another person or entity.

(rr) Welfare fraud.

(ss) Kidnapping.

(tt) Robbery, aggravated robbery or armed robbery.

10. "Nursing care institution":

(a) Means an institution or other place, however named, whether for profit or not, including facilities operated by this state or a subdivision of this state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician.

(b) Does not include:

(i) An institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination.

(ii) Nursing care services that are an integral part of a hospital licensed pursuant to this chapter.

11. "Unprofessional conduct" includes:

(a) Dishonesty, fraud, incompetency or gross negligence in performing administrative duties.

(b) Gross immorality or proselytizing religious views on patients without their consent.

(c) Other abuses of official responsibilities, which may include intimidating or neglecting patients.

#### 36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

#### 36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of eleven members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.

2. One manager who holds an active license issued pursuant to this article.

3. One administrator of a nonprofit or faith-based skilled nursing facility.

4. One administrator of a proprietary skilled nursing facility.

5. Two managers of an assisted living center as defined in section 36-401.

6. One manager of an assisted living home as defined in section 36-401.

7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

8. One public member who represents an organization that advocates for the elderly.

9. One person who is a family member of a resident in either a skilled nursing facility or an assisted living facility at the time the person is appointed to the board.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two-year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three-year terms.

G. A board member shall not serve for more than two consecutive terms.

H. The board shall meet at least twice a year.

I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty percent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

#### 36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

1. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.

(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.

(c) Includes thorough training in elements of good health care facilities administration.

2. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.

3. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and has not been convicted of any felony involving violence or financial fraud.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55 and has not been convicted of any felony involving violence or financial fraud.

B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.

C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

1. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.

(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.

(c) Includes thorough training in elements of assisted living facility administration.

2. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.

3. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

4. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and has not been convicted of any felony involving violence or financial fraud.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55 and has not been convicted of any felony involving violence or financial fraud.

D. Notwithstanding any other provision of this article, beginning July 1, 2021, all new licenses and certifications issued by the board must be approved by both the board and the department of health services.

E. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.

F. In lieu of the requirements contained in subsection A, paragraph 1 or subsection C, paragraph 1 of this section, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in the respective paragraph.

G. A license is nontransferable and remains in effect until thirty days after the licensee's birthday of an even-numbered year, at which time the license may be renewed if the licensee otherwise complies with this article and the license has not been surrendered, suspended or revoked.

H. A certificate is nontransferable and remains in effect until thirty days after the certificate holder's birthday of an odd-numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

I. This section does not apply to managers of adult foster care homes as defined in section 36-401.

#### 36-446.05. Reciprocity; present administrators

The board may issue a nursing care institution administrator's license, without examination or with partial examination, to any person who holds a current license from another state or territory of the United States provided the standards for licensure in such other state or territory of the United States are at least substantially equivalent to those prevailing in this state, and provided that the applicant is otherwise qualified.

#### 36-446.06. Temporary licenses and certificates

A. The board may issue a temporary nursing care institution administrator's license or temporary assisted living facility manager's certificate to individuals who are determined to meet standards established by the board and may revoke or suspend temporary licenses or certificates previously issued by the board in any case in which the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.

B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license or certificate.

C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care institution administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include the ability to meet such other standards as are established by the board.

D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

#### 36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review; admission by default; military members

A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:

1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
2. Obtaining or renewing a license by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial licensure.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a license or falsely impersonating another licensee.
7. Unauthorized disclosure of information relating to a patient or a patient's records.
8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
9. Violation of this article or a rule adopted pursuant to this article.

B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:

1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
2. Obtaining or renewing a certificate by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial certification.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
7. Unauthorized disclosure of information relating to a resident or a resident's records.
8. Violation of this article or a rule adopted pursuant to this article.

C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or

the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.

D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.

E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such complaint or report and the action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.

F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.

G. Except as provided in subsection R of this section, failure on the part of any licensed nursing care institution administrator or certified assisted living facility manager to furnish evidence of having attended the required continuing education hours during the preceding two years shall preclude renewal of the license or certificate unless the continuing education requirement is fulfilled within one hundred twenty days.

H. On written request to the board, a nursing care institution administrator in good standing may cause the administrator's name and license to be transferred to an inactive list. Any nursing care institution administrator on inactive license status shall pay a license renewal fee. On written request to the board, and subsequent approval by the board, a nursing care institution administrator on inactive license status may resume active license status on meeting twenty-five hours of continuing education requirements within six months and payment of the current fee.

I. On written request to the board, the board shall transfer an assisted living facility manager in good standing to an inactive list. An assisted living facility manager on inactive certificate status shall pay a certificate renewal fee prescribed by the board of not more than one hundred dollars every two years. On written request to the board, and subsequent approval by the board, an assisted living facility manager on inactive certificate status may resume active certificate status on meeting requirements for six hours of continuing education within six months and payment of the current fee.

J. Suspension, revocation or denial of renewal of a license or certificate or censure or probation of a licensee or certificate holder by the board becomes effective only on the board's first giving the

licensee or certificate holder prior written notice and affording the licensee or certificate holder the right to request a hearing within thirty-five days of the receipt of notice. A hearing is not required before the denial of an original application for a license or a certificate. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

K. Any person wishing to make a complaint against a licensee or certificate holder under this article shall file a written complaint with the board within one year from the date of the action causing the complaint. If the board determines that the charges made in the complaint are sufficient, if true, to warrant suspension or revocation of a license or certificate issued under this article or censure or probation of a licensee or certificate holder under this article, it shall issue an order fixing the time and place for a hearing and requiring the licensee or certificate holder complained against to appear and answer the complaint. The order shall have affixed to it a copy of the complaint, and both shall be served on the licensee or certificate holder either personally or by certified mail sent to the licensee's or the certificate holder's last known address at least thirty-five days before the date set for the hearing. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

L. The board and an administrator or manager may enter into a settlement of any matter under investigation either before or after a notice of the hearing has been issued if the board determines that the proposed settlement adequately protects the public safety, health and welfare. The board shall record the terms of each settlement entered into and shall make the record available for public inspection.

M. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

N. If the board has initiated an investigation pursuant to this section, the board may continue the investigation and discipline the person under investigation even if that person resigns from practice after the board has initiated the investigation.

O. A licensee or certificate holder shall respond in writing to the board within thirty-five days after the board serves the complaint and notice of a formal hearing by certified mail. Service is complete on the date the board places the notice in the mail. The board shall consider a licensee's or certificate holder's failure to respond to the notice within thirty-five days as an admission by default to the allegations stated in the complaint. The board may then take disciplinary action against the licensee or certificate holder without conducting a formal hearing.

P. The board may set aside an admission by default if a licensee or certificate holder shows good cause. A licensee or certificate holder who applies to the board to set aside an admission by default shall demonstrate the following to the satisfaction of the board:

1. The failure to respond to the notice of the board was due to excusable neglect.
2. The licensee or certificate holder has a meritorious defense.
3. The licensee or certificate holder made prompt application to the board for relief.

Q. The board shall not consider an application to set aside an admission by default filed later than one hundred eighty days after the board's entry of the admission by default.

R. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. A license or certificate issued pursuant to this chapter to any member serving in the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. If the license or certificate is renewed during the applicable extended time period, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the board a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

**36-446.08. Nursing care institution administrators' licensing and assisted living facility managers' certification fund; investment of fund monies**

A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.

B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.

D. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

**36-446.09. Violations: classification**

A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.

B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state any such enforcement proceeding.

#### 36-446.10. Confidentiality of records; release of complainant's name and nature of complaint

A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

#### 36-446.11. Relief from civil liability

Members, employees and agents of the board and members of review committees shall not be held civilly liable for acts done or actions taken by any of these persons if such persons act in good faith following the requirements of this article. A person who in good faith reports or provides information to the board shall not be held civilly liable as a result of doing so.

#### 36-446.12. Fees

A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:

1. Initial application.
2. Examination for licensure as a nursing care institution administrator.
3. A license as a nursing care institution administrator.
4. Renewing an active biennial license.
5. Renewing an inactive biennial license.
6. A temporary license as a nursing care institution administrator.
7. Readministering the state examination.
8. Readministering the national examination.
9. A duplicate license.
10. Late renewal of a license.
11. Certifying licensure status.

12. Reviewing the sponsorship of continuing education programs, for each credit hour.

13. Reviewing an individual's request for continuing education credit hours, for each credit hour.

B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.

C. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

**36-446.13. Unlawful act; unlicensed operation; injunction**

A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.

B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.

C. For the purposes of this section, damage or injury is presumed.

D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.

E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

**36-446.14. Referral agencies; assisted living facilities and assisted living homes; disclosure; acknowledgement; fee; notice; requirements; civil penalty; definitions**

A. A referral agency shall disclose, in the form prescribed by subsection D of this section, to any prospective resident or representative of a prospective resident at the time or before any referral is made for care at an assisted living facility or assisted living home all of the following:

1. The existence of any current business relationship or any common ownership or control and any other financial, business, management or familial relationship that exists between the referral agency and the assisted living facility or assisted living home.

2. That the assisted living facility or assisted living home pays a fee to the referral agency in connection with the referral.

3. The amount of the fee, if determined, or a good faith estimate of the fee, if not determined, that the assisted living facility or assisted living home will pay to the referral agency. The referral agency may describe the fee as a dollar amount or as a percentage of the prospective resident's first month's rent and care charges at the facility or home.

B. After the first instance of the referral agency providing the disclosure required by subsection A of this section, the referral agency shall request from the prospective resident or representative of a prospective resident an acknowledgement of receiving the disclosure in the same manner and form in which the disclosure was delivered.

C. The prospective resident may terminate all services of the referral agency for the prospective resident at any time, including the use of the prospective resident's personal information, by providing a written or electronic termination notice to the referral agency. If the prospective resident delivers a termination notice, the referral agency is not entitled to any fee for the resident's move-in after the date of the termination notice unless either of the following applies:

1. The assisted living facility or assisted living home chosen by the resident within twelve months after the date of termination was specifically identified and referred to the resident after evaluating the prospective resident's profile and requests before the resident delivered the notice of termination.
2. The referral agency provides documentation to the assisted living facility or assisted living home that the resident communicated with the referral agency for referral services before the resident's admission to the assisted living facility or assisted living home.

D. The referral agency's written, electronic or oral disclosure shall be in the following format and, if written, shall be in fourteen-point font type:

Arizona law requires that we provide you with the following disclosure notice.

We are in the business of referring residents to assisted living facilities and assisted living homes. We will be paid by the facility or home if you move into one of the referred facilities or homes. The fee we receive from the facility or home into which you move typically ranges from (\_\_\_) to (\_\_\_) percent of your first month's rent and care charges or from (\$\_\_\_) to (\$\_\_\_). We (do/do not) have a current business relationship (but/and) we (do/do not) have a common ownership or control in, or any other financial, business, management or familial relationship with, (any) (one or more) of the homes and facilities to which we are referring you.

By providing us with a written or electronic notice, you have the right to terminate our services to you at any time, including our use of your personal information. If you terminate our services, we will not be entitled to any fee for any move-in you make after the date of the termination notice unless either:

1. The facility or home you choose within the next twelve months is one that we specifically identify and refer to you after we evaluate your profile and requests but before we receive your notice of termination.
2. You communicate with us before you move into the facility or home.

E. Within fourteen days after a resident is admitted to an assisted living facility or assisted living home, the facility or home shall notify the referral agency of the resident's admission if the facility or home is contracted with the referral agency. Not later than fourteen days after receiving notice of the resident's admission, the referral agency shall provide the assisted living facility or assisted living home with a written or electronic copy or recording of the disclosure made to the resident and the resident's acknowledgement of receiving the disclosure as prescribed in subsections B and D of this section, along with the date and time of the disclosure to the resident. The assisted living facility or assisted

living home shall maintain a copy of the disclosure for as long as the resident is at the facility or home. The referral agency shall maintain a copy of the disclosure and acknowledgement for one year. The assisted living facility or assisted living home shall not pay any referral fee associated with a resident until the facility or home receives the written or electronic copy or recording of the disclosure made to the resident and the resident's acknowledgement of receiving the disclosure provided and maintained in the same manner and form.

F. A referral agency that violates this section is subject to a civil penalty of up to \$1,000 for each violation. The attorney general or a county attorney may institute a proceeding in superior court to recover the civil penalty under this subsection and to restrain and enjoin a violation of this section. Any civil penalty recovered pursuant to this subsection shall be deposited in the general fund of the jurisdiction that prosecuted the violation.

G. For the purposes of this section:

1. "Electronically" includes an audio recording that conforms with the Arizona rules of evidence, that is maintained by the referral agency and that is transmitted to the assisted living facility or assisted living home and the resident or the resident's representative in a format that can be downloaded.

2. "Referral agency":

(a) Means a person or entity that provides referrals for a fee that is collected from either the resident or the assisted living facility or assisted living home.

(b) Does not include either:

(i) An assisted living facility or assisted living home, or its employees.

(ii) A resident, a resident's family member or a patron of an assisted living facility or assisted living home who refers a prospective resident to an assisted living facility or assisted living home and receives a discount or other remuneration from the assisted living facility or assisted living home.

[36-446.15. Assisted living facility caregivers; training and competency requirements; medication administration; testing](#)

A. Notwithstanding any other law, a person who successfully completes the training and competency requirements developed by the Arizona health care cost containment system administration for in-home direct care workers satisfies the training requirements for assisted living facility caregivers, except for medication administration training required by the assisted living facility caregiver's scope of practice.

B. An individual who meets the requirements specified in subsection A of this section and who registers for a medication administration examination is required to take and successfully complete only the part of the assisted living facility caregiver examination that covers the subject of medication administration.

C. The testing of an individual for medication administration competency:

1. Shall be conducted in accordance with the testing standards adopted by the board.
2. May be conducted by a training school approved by the board or by the assisted living facility that provided the training for the individual.

**36-446.16. Assisted living facility caregivers; training requirements; board standards; definition**

A. Except as provided in section 36-446.15, an individual shall successfully complete either of the following requirements for certification as an assisted living facility caregiver:

1. Both of the following:

(a) Sixty-two hours of on-the-job training under the direct supervision of any of the following health professionals:

(i) A physician who is licensed pursuant to title 32, chapter 13 or 17.

(ii) A registered nurse practitioner, registered nurse or licensed practical nurse who is licensed pursuant to title 32, chapter 15.

(iii) A pharmacist who is licensed pursuant to title 32, chapter 18.

(iv) A physician assistant who is licensed pursuant to title 32, chapter 25.

(v) A certified assisted living facility manager with at least five years of experience. Only thirty-one of the sixty-two hours of on-the-job training may be under the direct supervision of a certified assisted living facility manager.

(b) Pass the board-required examination with a score of at least seventy-five percent.

2. The board's required curriculum and examination for assisted living facility caregiver certification.

B. The board shall prescribe standards by rule for the on-the-job training prescribed in subsection A, paragraph 1, subdivision (a) of this section.

C. For the purposes of this section, "direct supervision" means the on-site, in-view observation and guidance of a caregiver who is in training by the supervising health professional.

## C-13.

### **BARBERING AND COSMETOLOGY BOARD**

#### Title 4, Chapter 10

- Amend: R4-10-101, R4-10-102, R4-10-103, R4-10-106, R4-10-111, R4-10-112, R4-10-113, R4-10-114, R4-10-115, R4-10-A101, Table A1, Table B1, R4-10-201, R4-10-202, R4-10-203, R4-10-204, R4-10-205, R4-10-A201, R4-10-A202, Article 3, R4-10-301, R4-10-302, R4-10-304, R4-10-304.1, R4-10-305, R4-10-306, R4-10-307, R4-10-308, R4-10-309, R4-10-310, R4-10-B301, R4-10-B302, R4-10-B303, R4-10-B304, Article 4, R4-10-401, R4-10-402, R4-10-403, R4-10-405, R4-10-A401, R4-10-B401, R4-10-B402
- Renumber: R4-10-104, R4-10-105, R4-10-107, R4-10-110, Table 1, R4-10-A101, Table A1, Table B1, Article 2, R4-10-201, R4-10-202, R4-10-203, R4-10-204, R4-10-205, R4-10-206, R4-10-206.1, R4-10-207, R4-10-208, R4-10-209, R4-10-210, R4-10-A201, R4-10-A202, Article 3, R4-10-301, R4-10-302, R4-10-304, R4-10-304.1, R4-10-305, R4-10-306, R4-10-307, R4-10-308, R4-10-309, R4-10-310, R4-10-B301, R4-10-B302, R4-10-B303, R4-10-B304, R4-10-401, R4-10-402, R4-10-404, R4-10-405, R4-10-A401, R4-10-B401, R4-10-B402, R4-10-501, Table 1, R4-10-601, R4-10-602, R4-10-603, R4-10-703, R4-10-704, R4-10-801, R4-10-802, R4-10-805, R4-10-807, R4-10-811,
- New Section: R4-10-B201, R4-10-B202, R4-10-303, R4-10-B305, R4-10-B306, R4-10-B307, R4-10-404
- Repeal: R4-10-108, Article 3, R4-10-301, R4-10-303, R4-10-304, R4-10-304.1, R4-10-305, R4-10-502, R4-10-503, R4-10-504, R4-10-505, R4-10-506, R4-10-507, R4-10-508, R4-10-509, Article 6, Article 7, R4-10-701, R4-10-702, R4-10-705, Article 8, R4-10-803, R4-10-804, Exhibit 1, Exhibit 2, R4-10-806, R4-10-808, R4-10-809, Article 9, R4-10-901, R4-10-902
- New Article: Article 2, Article 5,
- New Part: Part A, Part B, Part A, Part B, Part A, Part B, Part A, Part B



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 5, 2024

**SUBJECT: BARBERING AND COSMETOLOGY BOARD**  
Title 4, Chapter 10

**Amend:** R4-10-101, R4-10-102, R4-10-103, R4-10-106, R4-10-111, R4-10-112, R4-10-113, R4-10-114, R4-10-115, R4-10-A101, Table A1, Table B1, R4-10-201, R4-10-202, R4-10-203, R4-10-204, R4-10-205, R4-10-A201, R4-10-A202, Article 3, R4-10-301, R4-10-302, R4-10-304, R4-10-304.1, R4-10-305, R4-10-306, R4-10-307, R4-10-308, R4-10-309, R4-10-310, R4-10-B301, R4-10-B302, R4-10-B303, R4-10-B304, Article 4, R4-10-401, R4-10-402, R4-10-403, R4-10-405, R4-10-A401, R4-10-B401, R4-10-B402

**Renumber:** R4-10-104, R4-10-105, R4-10-107, R4-10-110, Table 1, R4-10-A101, Table A1, Table B1, Article 2, R4-10-201, R4-10-202, R4-10-203, R4-10-204, R4-10-205, R4-10-206, R4-10-206.1, R4-10-207, R4-10-208, R4-10-209, R4-10-210, R4-10-A201, R4-10-A202, Article 3, R4-10-301, R4-10-302, R4-10-304, R4-10-304.1, R4-10-305, R4-10-306, R4-10-307, R4-10-308, R4-10-309, R4-10-310, R4-10-B301, R4-10-B302, R4-10-B303, R4-10-B304, R4-10-401, R4-10-402, R4-10-404, R4-10-405, R4-10-A401, R4-10-B401, R4-10-B402, R4-10-501, Table 1, R4-10-601, R4-10-602, R4-10-603, R4-10-703, R4-10-704, R4-10-801, R4-10-802, R4-10-805, R4-10-807, R4-10-811

**New Section:** R4-10-B201, R4-10-B202, R4-10-303, R4-10-B305, R4-10-B306, R4-10-B307, R4-10-404

**Repeal:** R4-10-108, Article 3, R4-10-301, R4-10-303, R4-10-304, R4-10-304.1, R4-10-305, R4-10-502, R4-10-503, R4-10-504, R4-10-505, R4-10-506, R4-10-507, R4-10-508, R4-10-509, Article 5, Article 6, Article 7, R4-10-701, R4-10-702, R4-10-705, Article 8, R4-10-803, R4-10-804, Exhibit 1, Exhibit 2, R4-10-806, R4-10-808, R4-10-809, Article 9, R4-10-901, R4-10-902

**New Article:** Article 2,

**New Part:** Part A, Part B, Part A, Part B, Part A, Part B, Part A, Part B

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**Summary:**

This regular rulemaking with the Barbering and Cosmetology Board (Board) seeks to amend thirty-eight (38) rules, two (2) tables, and two (2) articles; renumber fifty (50) rules, four (4) tables, and two (2) articles; add seven (7) new sections; adding two (2) new articles; adding eight (8) new parts; and repeal twenty-four (24) rules, three (3) articles, and two (2) exhibits in Title 4, Chapter 10. Specifically, Article 1 relates to General Provisions, Part A relates to Barbering, Part B relates to Cosmetology, Article 2 relates to Personal Licensure or Registration, Article 3 relates to Schools; Eyelash Technology Training Program, Part A relates to Barbering, Part B relates to Cosmetology, Article 4 relates to Establishments, Part A relates to Barbering, Part B relates to Cosmetology, and Articles 5-9 are being repealed.

The legislature eliminated the Cosmetology and Barbers Board and created the Barbering and Cosmetology Board. The purpose of the consolidation was to ensure the public is protected from the incompetent practice of barbering and cosmetology by establishing minimum qualifications for entry into these disciplines and swift and effective discipline for practitioners who violate barbering or cosmetology statutes or rules. With this rulemaking, the Board is amending existing cosmetology and barbering rules that are needed to comply with statutory changes, establishing rules for eyelash technicians, and establishing five new fees: a fee for a barbering license by universal recognition and fees for an initial and renewal registration as an eyelash technician, delinquent renewal of an eyelash technician registration, and approval of an eyelash technician training program . The Board is also making minor, non-substantive changes to clarify the rules. Some of these changes address issues identified in 5YRRs approved by Council for the two previous boards in 2020.

**1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Board cites both general and specific statutory authority for these rules.

**2. Do the rules establish a new fee or contain a fee increase?**

The Board states it is establishing five new fees: a fee for a barbering license by universal recognition (See A.R.S. §§ 32-328 and 32-4302) and fees for an initial and renewal registration as an eyelash technician, delinquent renewal of an eyelash technician registration, and approval of an eyelash technician training program (See A.R.S. § 32-507).

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board states no study was reviewed or relied upon during the course of this rulemaking.

4. **Summary of the agency's economic impact analysis:**

To ensure that the public is protected from incompetent practice of barbering and cosmetology, the legislature created the Barbering and Cosmetology Board to help establish minimum qualifications for entry into these disciplines and to provide discipline to offending practitioners. This eliminated both the existing Boards of Cosmetology and Barbers, but the statutes regarding the two occupations were never combined. This rulemaking makes changes to existing cosmetology and barbering rules that are needed to comply with statutory changes. The Board believes the economic impact of this rulemaking will be minimal because the only substantive changes made to existing rules are those required by statute. Individuals who choose to register as an eyelash technician and those who choose to provide training programs for eyelash technicians will be required to comply with procedures for registration and program approval and pay specified fees.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

Because the rules are neither intrusive nor costly, the Board did not consider an alternative method.

6. **What are the economic impacts on stakeholders?**

The Board, on which the primary economic impact of this rulemaking falls, must pay to complete and implement the rulemaking, modify all application forms, modify licensing procedures, and ensure Board employees are trained in the new procedures. Additionally, licensees and registrants, schools, approved eyelash technician training programs, and establishments are directly affected by the rulemaking. Persons subject to the rulemaking are required to apply to the Board for a license, registration, or approval, and renew such documentation when specified: this process includes paying any associated fees.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

ARS §41-1057(D)(7) states the Council shall not approve the rule unless “[th]e rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.”

ARS § 41-1025(A) states that “An agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rulemaking or a supplemental notice filed with the secretary of state pursuant to section 41-1022. However, an

agency may terminate a rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule.”

ARS § 41-1025(B) continues with “In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.”

Under ARS 41-1022(E), “If, as a result of public comments or internal review, an agency determines that a proposed rule requires a substantial change pursuant to section 41-1025, the agency shall prepare a notice of supplemental rulemaking that contains the change in the proposed rule. The agency shall provide for additional public comment pursuant to section 41-1023 and file the notice with the secretary of state.”

**8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Board received written comments from 14 individuals. Six individuals attended the October 26, 2023, oral proceeding with two individuals commenting. These comments were related to the following items: how to calculate school hours, instructor required hours, and requirements for eyelash technicians.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board does not issue general permits but individual licenses as required by the Board’s statutes to each person that is qualified by statute.

**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Board states no federal law is directly applicable to the subject matter of these rules.

**11. Conclusion**

This regular rulemaking with the Barbering and Cosmetology Board seeks to amend thirty-eight rules, two tables, and two articles; renumber fifty rules, four tables, and two articles; add seven new sections; adding two new articles; adding eight new parts; and repeal twenty-four rules, three articles, and two exhibits in Title 4, Chapter 10. As indicated above, this rulemaking

establishes five new fees. The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.



Arizona Barbering & Cosmetology Board  
1740 W Adams St #4400 • Phoenix, AZ 85007  
<https://bcb.az.gov/> • 480-784-4539

Katie Hobbs  
Governor

Frank L. Migali  
Executive Director

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January 26, 2024

Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations Chapter 10. Barbering and Cosmetology Board**

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for the Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on October 31, 2023, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

An exemption from Executive Order 2022-01 was provided for this rulemaking by Brian Norman, of the governor's office, in an e-mail dated October 24, 2022. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Hannah Johnson, of the governor's office, in an e-mail dated January 24, 2024.

- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to 5YRRs submitted by the Boards of Cosmetology and Barbers in 2020. Neither of these Boards continues to exist.
- C. New fee: The rulemaking establishes five new fees: a fee for a barbering license by universal recognition (See A.R.S. §§ 32-328 and 32-4302) and fees for an initial and renewal registration as an eyelash technician, delinquent renewal of an eyelash technician registration, and approval of an eyelash technician training program (See A.R.S. § 32-507).
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.



- F. Certification regarding studies: I certify the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for the rules in this rulemaking.
  
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
  
- H. List of documents enclosed:
  - a. Cover letter signed by the Executive Director;
  - b. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
  - c. Economic, Small Business, and Consumer Impact Statement;
  - d. Public comments

Sincerely,

Frank L. Migali, MBA  
Executive Director  
Arizona Barbering & Cosmetology Board

Cc: Gary Begley, Arizona Barbering & Cosmetology Board Chair

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 10. BARBERING AND COSMETOLOGY BOARD**

**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R4-10-101	Amend
R4-10-102	Amend
R4-10-103	Amend
R4-10-104	Renumber
R4-10-105	Renumber
R4-10-106	Amend
R4-10-107	Renumber
R4-10-108	Repeal
R4-10-110	Renumber
R4-10-111	Amend
R4-10-112	Amend
R4-10-113	Amend
R4-10-114	Amend
R4-10-115	Amend
Table 1	Renumber
Part A	New Part
R4-10-A101	Renumber
R4-10-A101	Amend
Table A1	Renumber
Table A1	Amend
Part B	New Part
Table B1	Renumber
Table B1	Amend
Article 2	Renumber
Article 2	New Article
R4-10-201	Renumber

R4-10-201	Amend
R4-10-202	Renumber
R4-10-202	Amend
R4-10-203	Renumber
R4-10-203	Amend
R4-10-204	Renumber
R4-10-204	Amend
R4-10-205	Renumber
R4-10-206	Renumber
R4-10-206.1	Renumber
R4-10-207	Renumber
R4-10-208	Renumber
R4-10-209	Renumber
R4-10-210	Renumber
Part A	New Part
R4-10-A201	Renumber
R4-10-A201	Amend
R4-10-A202	Renumber
R4-10-A202	Amend
Part B	New Part
R4-10-B201	New Section
R4-10-B202	New Section
Article 3	Repeal
Article 3	Renumber
Article 3	Amend
R4-10-301	Repeal
R4-10-301	Renumber
R4-10-301	Amend
R4-10-302	Renumber
R4-10-302	Amend
R4-10-303	Repeal
R4-10-303	New Section
R4-10-304	Repeal

R4-10-304	Renumber
R4-10-304	Amend
R4-10-304.1	Repeal
R4-10-304.1	Renumber
R4-10-304.1	Amend
R4-10-305	Repeal
R4-10-305	Renumber
R4-10-305	Amend
R4-10-306	Renumber
R4-10-306	Amend
R4-10-307	Renumber
R4-10-307	Amend
R4-10-308	Renumber
R4-10-308	Amend
R4-10-309	Renumber
R4-10-309	Amend
R4-10-310	Renumber
R4-10-310	Amend
Part A	New Part
R4-10-A301	Renumber
R4-10-A301	Amend
R4-10-A302	Renumber
R4-10-A302	Amend
R4-10-A303	Renumber
R4-10-A303	Amend
Part B	New Part
R4-10-B301	Renumber
R4-10-B301	Amend
R4-10-B302	Renumber
R4-10-B302	Amend
R4-10-B303	Renumber
R4-10-B303	Amend
R4-10-B304	Renumber

R4-10-B304	Amend
R4-10-B305	New Section
R4-10-B306	New Section
R4-10-B307	New Section
Article 4	Amend
R4-10-401	Renumber
R4-10-401	Amend
R4-10-402	Renumber
R4-10-402	Amend
R4-10-403	Amend
R4-10-404	Renumber
R4-10-404	New Section
R4-10-405	Renumber
R4-10-405	Amend
Part A	New Part
R4-10-A401	Renumber
R4-10-A401	Amend
Part B	New Part
R4-10-B401	Renumber
R4-10-B401	Amend
R4-10-B402	Renumber
R4-10-B402	Amend
Article 5	Repeal
R4-10-501	Renumber
R4-10-502	Repeal
R4-10-503	Repeal
R4-10-504	Repeal
R4-10-505	Repeal
R4-10-506	Repeal
R4-10-507	Repeal
R4-10-508	Repeal
Table 1	Renumber
R4-10-509	Repeal

Article 6	Repeal
R4-10-601	Renumber
R4-10-602	Renumber
R4-10-603	Renumber
Article 7	Repeal
R4-10-701	Repeal
R4-10-702	Repeal
R4-10-703	Renumber
R4-10-704	Renumber
R4-10-705	Repeal
Article 8	Repeal
R4-10-801	Renumber
R4-10-802	Renumber
R4-10-803	Repeal
R4-10-804	Repeal
R4-10-805	Renumber
Exhibit 1	Repeal
Exhibit 2	Repeal
R4-10-806	Repeal
R4-10-807	Renumber
R4-10-808	Repeal
R4-10-809	Repeal
R4-10-811	Renumber
Article 9	Repeal
R4-10-901	Repeal
R4-10-902	Repeal

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

Authorizing statute: A.R.S. §§ 32-304(A)(1) and 32-504(A)(1)

Implementing statute: A.R.S. §§ 32-304(A)(1), 32-510(A)(2), 32-511(A)(2), 32-512(A)(2), 32-512.01(A)(2), 32-519, 32-531, 32-532, 32-541(B), 32-551, and 32-557

**3. The effective date for the rules:**

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

**a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable

**b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

**4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 29 A.A.R. 1896, August 25, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 1809, August 25, 2023

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

Name: Frank Migali, Executive Director

Address: 1740 W Adams Street, Suite 4400

Phoenix, AZ 85007

Telephone: 480-784-4539

E-mail: azboard@bcb.az.gov

Web site: bcb.az.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

Under Laws 2021, Chapter 334, the legislature created the Barbering and Cosmetology Board (Board) and eliminated both the existing Boards of Cosmetology and Barbers. The legislature did not, however, combine the statutes regarding the two occupations. As required under A.R.S. § 41-2955(B), the legislature indicate the purpose of the consolidation was to ensure the public is protected from the incompetent practice of barbering and cosmetology by establishing minimum qualifications for entry into these disciplines and swift and effective discipline for practitioners who violate barbering or cosmetology statutes or rules. Under Laws 2021, Chapter 334, Section 34, the consolidation was effective on December 31, 2021.

Under Laws 2023, Chapter 18, the legislature added A.R.S. § 32-519, which created the position of eyelash technician and required eyelash technicians to register with the Board and pay a fee established by the Board. The statute also required an eyelash technician to complete a Board-approved training program.

Under Laws 2023, Chapter 20, the legislature amended A.R.S. §§ 32-532 and 32-557 regarding becoming a cosmetology, aesthetics, nail technology, or hairstyling instructor by reciprocity and allowing a student enrolled in a school for the purpose of becoming an instructor to be a paid employee of the school.

Under Laws 2023, Chapter 22, the legislature amended A.R.S. §§ 32-510, 32-512, and 32-512.01 to add aestheticians, nail technicians, and hairstylists as disciplines able to obtain required training through a U.S. Department of Labor or Department of Economic Security-approved apprenticeship program.

In this rulemaking, the Board makes the changes to existing cosmetology and barbering rules that are needed to comply with statutory changes. The Board also makes minor, non-substantive changes to clarify the rules. Some of these changes address issues identified in 5YRRs approved by Council for the two previous boards in 2020. An exemption from Executive Order 2022-01 was provided for this rulemaking by Brian Norman, of the governor's office, in an e-mail dated October 24, 2022. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Hannah Johnson, of the governor's office, in an e-mail dated January 24, 2024.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The Board believes the economic impact of this rulemaking will be minimal because the only substantive changes made to existing rules are those required by statute. Individuals who choose to register as an eyelash technician and those who choose to provide training programs for eyelash technicians will be required to comply with procedures for registration and program approval and pay specified fees.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

In addition to the changes identified in item 11, the Board made the following non-substantive changes between the proposed and final notices of rulemaking:

R4-10-114(C)(1) and (3): The Board corrected an oversight by adding schools to these two subsections.

R4-10-B202(B)(3)(b)(i) and R4-10-B307(B)(1): On advice of the Board’s AAG, the date in these subsections was changed to coincide with when the rules will go into effect.

R4-10-B306(B)(2): Subsection (g), requiring dates of training completed was added to the provisional registration provided to trainees in an approved eyelash technician training program.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:**

The Board received written comments from 14 individuals. Six individuals attended the October 26, 2023, oral proceeding but only two of them made comments. In addition to the comments addressed below, two individuals expressed appreciation for the provisions regarding eyelash technician training and registration. The other comments made and the Board’s analysis of and response to the comments follows:

COMMENT	ANALYSIS	RESPONSE
R4-10-306(P)(1): Students frequently travel long distances to attend school. Allowing extended school days is in their interest. Leave the provision that students attend school no more than 56 hours per week rather than eight hours per day.	The Board agrees with the comment.	The amended language was removed leaving the existing language.

<p>R4-10-307(B)(1) and (B)(2): Why is a potential instructor for nail technology allowed to obtain fewer credit hours at an accredited college or university than an instructor in other disciplines? All instructors are required to obtain 350 hours of training.</p>	<p>The Board agrees with the comment.</p>	<p>The language was changed to allow potential nail technology instructors to obtain the same number of credit hours at an accredited college or university as potential instructors in other disciplines.</p>
<p>R4-10-309: The current R4-10-306, addressing curricula hours for all disciplines, seems missing from the amended rules.</p>	<p>The information regarding curricular hours is now at R4-10-309.</p>	<p>No change</p>
<p>R4-10-B202: It's not right that a person who spent many hours and paid many dollars to obtain a cosmetology or aesthetician license will now have to obtain 30 hours of training in eyelash technology, pay a fee to register, and complete with those who are not licensed.</p> <p>Because a licensed aesthetician or cosmetologist can already do lash extensions, there should not be an additional fee.</p> <p>“Certification” on lash extensions could be included in continuing education under the existing license.</p>	<p>It is the legislature, not the Board, which established the separate discipline of eyelash technology and required training and registration. Because the requirements are in statute, the Board must include them in the rules.</p> <p>As indicated, it is the legislature that decided the additional training and registration, including a small fee, was necessary. Additionally, there is no statutory or rule requirement regarding continuing education of aestheticians or cosmetologists.</p>	<p>No change</p> <p>No change</p>

<p>It's upsetting that after putting me through aesthetics school and thousands in debt to be able to do lash extension, I now don't even need a license. I strongly believe taking away the requirement to have a license does not help anybody.</p>	<p>This is a legislative matter. It cannot be addressed in the rules.</p>	<p>No change</p>
<p>Those who are licensed can already do lashing. There is no need for them to pay a separate fee to do what they already do safely. And the limited training being proposed could pose a huge risk to clients.</p>	<p>A.R.S. § 32-519 specifically sets a maximum of 30 hours of training to be an eyelash technician.</p>	<p>No change</p>
<p>Currently licensed aestheticians should be certified by the state to do eyelash extensions.</p>	<p>See A.R.S. § 32-519</p>	<p>No change</p>
<p>Is it accurate that a person with no other training needs only 30 hours of training to perform eyelash extensions? This is dangerous.</p>	<p>Yes—see A.R.S. § 32-519</p>	<p>No change</p>
<p>Has a class ratio been determined? Is this going to be up to the training instructor?</p>	<p>The Board will not determine a class ratio. This decision will be made by the person responsible for an approved eyelash technician training program.</p>	<p>No change</p>

<p>Is there a sanitation class?</p> <p>There may be confusion with those who are instructors in eyelash technician training programs claiming to be Board-approved instructors.</p> <p>An instructor in an eyelash technician training program should be knowledgeable in how to teach.</p>	<p>Yes—see R4-10-B307(C)(1)(e).</p> <p>Training program instructors are not approved or licensed by the Board. The training program is approved by the Board and responsibility for complying with all requirements is on the person responsible for the training program.</p> <p>The Board does not have authority to impose a requirement on eyelash technician training program instructors.</p>	<p>No change</p> <p>No change</p> <p>No change</p>
<p>R4-10-B301(B)(2)(n): The Arizona and American Societies of Plastic Surgeons opposed having aesthetician schools teach about light therapy for cosmetic purposes. They argue that patient safety and quality outcome requires this procedure be done by a medical professional.</p>	<p>The provision objected to has been part of the rules of the Board of Cosmetology for many years (See R4-10-303(A)(2)(n) at supplement 22-2 of the Arizona Administrative Code). The Board has enforced the provision without difficulty during all those years.</p>	<p>No change</p>
<p>R4-10-B307: At the oral proceeding, it was suggested that an eyelash technician instructor be required to provide</p>	<p>R4-10-B307(B)(2) requires a notarized letter from an individual licensed or registered by the Board with personal</p>	<p>No change</p>

<p>a notarized letter from an already licensed instructor.</p>	<p>knowledge of the potential instructor’s work. An instructor in an eyelash technician training program is not required to be a licensed instructor but rather, to have practiced as an eyelash technician for at least 30 hours a week for two years.</p>	
<p>R4-10-B307(B): Add that a currently licensed nail technician instructor is qualified to be an eyelash technician instructor.</p>	<p>No currently licensed instructor is automatically qualified to be an eyelash technician instructor. Only currently licensed cosmetologists or aestheticians and registered eyelash technicians are qualified to become eyelash technician instructors because these disciplines are the only ones with a scope of practice that includes eyelash extensions.</p>	<p>No change</p>
<p>R4-10-B307(C): Thirty hours of education is NOT enough for someone who does not have a foundation in cosmetology or aesthetics to be working around the eyes</p>	<p>A.R.S. § 32-519 specifically sets a maximum of 30 hours of training to be an eyelash technician.</p>	<p>No change</p>
<p>Because facials are part of the curriculum for both cosmetologists and barbers, there needs to be language to “grandfather” barbers, cosmetologist, and aestheticians.</p>	<p>Except for the provisions regarding eyelash technology, the rule changes are minor and non-substantive. The Board sees no need to “grandfather” licensees regarding these changes.</p>	<p>No changes</p>

It would be helpful if currently licensed practitioners who register as an eyelash technician could have their license and registration renewals occur at the same time.	The Board agrees this is a good idea and will work to implement it.	No change
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**12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

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

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board’s statutes to each person that is qualified by statute (See A.R.S. §§ 32-322, 32-323, 32-325, 32-326, 32-510, 32-511, 32-512, 32-512.01, 32-519, 32-531,32-542, and 32-551) and rule.

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

No federal law is directly applicable to the subject matter of these rules.

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

No analysis was submitted.

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

None

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

None of the rules in this rulemaking was made, amended, or repealed as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 10. BARBERING AND COSMETOLOGY BOARD**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R4-10-101. Definitions
- R4-10-102. Fees and Charges
- R4-10-103. Payment of Fees
- R4-10-104. ~~Application for License by Examination~~ Renumbered
- R4-10-105. ~~Application for License by Reciprocity; Application for License by Universal Recognition~~  
Renumbered
- R4-10-106. ~~Licensing~~ Time Frames
- R4-10-107. ~~License Renewal~~ Renumbered
- R4-10-108. ~~Pre-screening Review; Licensing Examination~~ Repealed
- R4-10-110. ~~Reactivating an Inactive License~~ Renumbered
- R4-10-111. Display of Licenses, Registrations, and Signs
- R4-10-112. Infection Control and Safety Standards
- R4-10-113. Establishment and School Management
- R4-10-114. Board Inspection
- R4-10-115. Rehearing or Review of a Board Decision
- Table 1. ~~Time Frames (in days)~~ Renumbered

**PART A. BARBERING**

Section

- ~~R4-10-501; R4-10-A101.~~ R4-10-A101. Definitions
- ~~Table 1; Table A1.~~ Table A1. Time Frames (in days)

**PART B. COSMETOLOGY**

Section

- ~~Table 1; Table B1.~~ Table B1. Time Frames (in days)

**ARTICLE 2. SCHOOLS PERSONAL LICENSURE OR REGISTRATION**

Section

- ~~R4-10-105:~~ R4-10-201. Application for Licensure by Reciprocity; Application for Licensure by Universal Recognition
- ~~R4-10-104:~~ R4-10-202. Application for a Cosmetology, Aesthetics, Hairstyling, Nail Technology, or Barber License by Examination
- ~~R4-10-107:~~ R4-10-203. Personal License or Registration Renewal
- ~~R4-10-110:~~ R4-10-204. Reactivating an Inactive or Expired License or Registration
- R4-10-205. ~~Aesthetic School Requirements~~ Renumbered
- R4-10-206. ~~Cosmetology School Requirements~~ Renumbered
- R4-10-206.1. ~~Hairstyling School Requirements~~ Renumbered
- R4-10-207. ~~Nail Technology School Requirements~~ Renumbered
- R4-10-208. ~~Combined School Requirements~~ Renumbered
- R4-10-209. ~~Demonstrators; Exclusions~~ Renumbered
- R4-10-210. ~~Changes Affecting a License to Operate a School~~ Renumbered

**PART A. BARBERING**

Section

- ~~R4-10-601:~~ R4-10-A201. Examinations
- ~~R4-10-603:~~ R4-10-A202. Application for an Instructor License ~~Application by Examination~~

**PART B. COSMETOLOGY**

Section

- ~~R4-10-B201.~~ Application for an Instructor License by Examination
- ~~R4-10-B202.~~ Application for an Eyelash Technician Registration

**ARTICLE 2. ARTICLE 3. STUDENTS SCHOOLS; EYELASH TECHNOLOGY TRAINING PROGRAM**

Section

- ~~R4-10-301:~~ ~~Instruction; Licensed Individuals~~ Repealed
- ~~R4-10-210:~~ ~~R4-10-301.~~ ~~Changes Affecting a License to Operate a School~~
- ~~R4-10-201:~~ ~~R4-10-302.~~ Application for a License to Operate a Barber, Cosmetology, Aesthetics, Hairstyling, or Nail Technology School; Renewal

~~R4-10-303. Aesthetics Curriculum Required 600 Hours~~ Application to Renew a License to Operate a School

~~R4-10-802.~~ R4-10-304. Notification of Changes

~~R4-10-202.~~ R4-10-304.1. School Closure

~~R4-10-204.~~ R4-10-305. School Records, Student Certificates

~~R4-10-203.~~ R4-10-306. General Barber, Cosmetology, Aesthetics, Hairstyling, or Nail Technology School Requirements

~~R4-10-302.~~ R4-10-307. Instructor 350-hour Curriculum Required Hours Requirements

~~R4-10-208.~~ R4-10-308. Combined School Requirements

~~R4-10-306.~~ R4-10-309. Curricular Hours

~~R4-10-209.~~ R4-10-310. Demonstrators; Exclusions

#### **PART A. BARBERING**

Section

~~R4-10-805.~~ R4-10-A301. Barbering School Operations

~~R4-10-807.~~ R4-10-A302. Barbering School 1200-hour Curriculum Requirements

~~R4-10-811.~~ R4-10-A303. Offsite Training Facility

#### **PART B. COSMETOLOGY**

Section

~~R4-10-205.~~ R4-10-B301. Aesthetic School and 600-hour Curriculum Requirements

~~R4-10-206.~~ R4-10-B302. Cosmetology School and 1500-hour Curriculum Requirements

~~R4-10-206.1.~~ R4-10-B303. Hairstyling School and 1000-hour Curriculum Requirements

~~R4-10-207.~~ R4-10-B304. Nail Technology School and 600-hour Curriculum Requirements

R4-10-B305. Distant Classrooms

R4-10-B306. Approval of an Eyelash Technician Training Program

R4-10-B307. Requirements of an Eyelash Technician Training Program

#### **ARTICLE 4. SALONS ESTABLISHMENTS**

Section

~~R4-10-402.~~ R4-10-401. Changing Affecting a License to Operate ~~a Salon~~ an Establishment

~~R4-10-401.~~ R4-10-402. Application for a License to Operate a ~~Salon~~ Barber, Cosmetology, Aesthetics, Hairstyling, Nail, or Eyelash Establishment

R4-10-403. ~~Salon Barber, Cosmetology, Aesthetics, Hairstyling, Nail, or Eyelash Establishment~~ Requirements and Minimum Equipment

R4-10-404. Renewal of an Establishment License

~~R4-10-703.~~ R4-10-405. ~~Shop~~ Establishment Supervision

#### **PART A. BARBERING**

Section

~~R4-10-704.~~ ~~R4-10-A401.~~ ~~Shop~~ Barbering Establishment Mobile Units

#### **PART B. COMETOLOGY**

Section

~~R4-10-404.~~ ~~R4-10-B401.~~ Mobile Services

~~R4-10-405.~~ ~~R4-10-B402.~~ Shampoo Assistants

#### **ARTICLE 5. GENERAL PROVISIONS REPEALED**

Section

R4-10-501. ~~Definitions~~ Renumbered

R4-10-502. ~~Fees and Service Charges~~ Repealed

R4-10-503. ~~Fee Payment~~ Repealed

R4-10-504. ~~Safety and Infection Control Provisions~~ Repealed

R4-10-506. ~~Change of Ownership or Location~~ Repealed

R4-10-507. ~~Inspections~~ Repealed

R4-10-508. ~~Licensing Time frames~~ Repealed

Table 1. ~~Time frames (in days)~~ Renumbered

R4-10-509. ~~License Renewal~~ Repealed

#### **ARTICLE 6. EXAMINATION; BARBER AND INSTRUCTOR LICENSE APPLICATION REPEALED**

Section

- R4-10-601. ~~Examinations~~ Renumbered
- R4-10-602. ~~Barber License Application~~ Repealed
- R4-10-603. ~~Instructor License Application~~ Renumbered

#### **ARTICLE 7. ~~SHOPS~~ REPEALED**

##### Section

- R4-10-701. ~~Application for a License to Operate a Shop~~ Repealed
- R4-10-702. ~~Basic Equipment Required in a Shop~~ Repealed
- R4-10-703. ~~Shop Supervision~~ Renumbered
- R4-10-704. ~~Shop Mobile Units~~ Renumbered
- R4-10-705. ~~Display of Barber Pole~~ Repealed

#### **ARTICLE 8. ~~SCHOOLS~~ REPEALED**

##### Section

- R4-10-801. ~~Application for a License to Operate a School~~ Repealed
- R4-10-802. ~~Notification of Changes~~ Renumbered
- R4-10-803. ~~Use of "Accredited," "Approved," or Similar Terms~~ Repealed
- R4-10-804. ~~School Premises and Basic Equipment~~ Repealed
- R4-10-805. ~~School Operations~~ Renumbered
  - Exhibit 1. ~~Required Notice to a Barber Trainee~~ Repealed
  - Exhibit 2. ~~Required Notice to an Instructor Trainee~~ Repealed
- R4-10-806. ~~Student Training and Supervision~~ Repealed
- R4-10-807. ~~School Curriculum~~ Renumbered
- R4-10-808. ~~School Records~~ Repealed
- R4-10-809. ~~School Closure~~ Repealed
- R4-10-811. ~~Offsite Training Facility~~ Renumbered

#### **ARTICLE 9. ~~HEARINGS~~ REPEALED**

##### Section

- R4-10-901. ~~Hearing Procedures~~ Repealed
- R4-10-902. ~~Rehearing and Review of Decision~~ Repealed



## ARTICLE 1. GENERAL PROVISIONS

### R4-10-101. Definitions

The definitions in A.R.S. §§ ~~32-301~~, 32-501, 32-516, and 32-572 apply to this Chapter. Additionally, in this Chapter unless otherwise specified:

1. “Accredited” means approved by any regional or national accreditation organization.
2. “Administrative completeness review” means the Board’s process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. “Applicant” means an individual or any of the following seeking licensure or registration by the Board:
  - a. If a corporation, ~~any two officers~~ one officer as the applicant and a list of all officers of the corporation; or
  - b. If a partnership, ~~any two~~ one partner as the applicant and a list of the all other partners; or
  - c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, ~~any two members~~ one member as the applicant and a list of the all other members ~~limited liability company~~.
4. “Application packet” means the forms and documents the Board requires an applicant to submit.
5. “Approved by the Board,” as used in A.R.S. §§ 32-302 and 32-501, means a cosmetologist, aesthetician, barber, hair stylist, or nail technician has a current license issued by the Board and no record of disciplinary action.
- ~~5-6.~~ “Bracing” means to use a support that helps to steady or strengthen while performing a procedure.
7. “Barber pole” means a stationary or revolving sign composed of a vertical cylinder or pole with alternating, diagonal, stripes of any combination including red, white, and blue or a likeness of the sign.
- ~~6-8.~~ “Certification Certificate of hours” means a document issued by a licensed school to a student that states the total number of hours or credits completed at a the school, including, by the student who is transferring or withdrawing.
  - a. ~~A written statement of the hours or credits a student received in the licensed school, signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency’s official seal; or~~

- b. ~~If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.~~
- 7-9. “Certification of licensure” means the status of the license, signed by the ~~administrator~~ authorized individual of the agency authorized to issue cosmetology, hairstyling, nail technician, aesthetics, barbering, or instructor licenses in the jurisdiction in which the applicant received a license; ~~affixed with the agency’s official seal.~~
10. “Change of ownership,” as used in A.R.S. §§ 32-328, 32-545, and 32-552, means a change of 10 percent or more of the owners holding a license to operate an establishment or school.
- 8-11. “Classroom” means an area in which instruction or demonstration is provided ~~regarding theory and practice on models.~~
- 9-12. “Clinic” means the area where a student practices cosmetology, hairstyling, nail technology, ~~or~~ aesthetics, or barbering on the general public for a fee.
- 10-13. “Course” means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation ~~or certification~~ is given.
- 11-14. “Credit” means one earned academic unit of study based on:
- a. ~~Completing a high school’s~~ completing the required number of class sessions per calendar week in a course; ~~or~~
  - b. ~~Attending a one-hour class session per calendar week~~ at a community college, an accredited college or university, or a high school.
- 12-15. “Crossover hours” means hours of training obtained by a licensed aesthetician, cosmetologist, hair stylist, ~~or~~ nail technician, or barber that a school licensee accepts as hours of training required ~~for licensure~~ to complete a course of training in a different ~~profession~~ discipline.
- 13-16. “Days” means ~~calendar~~ business days.
17. “Direct supervision” means a licensee is physically present and observing the work of a supervisee.
18. “Discipline” means the fields of study or service regulated by the Board including cosmetology, hairstyling, aesthetics, nail technology, eyelash technology, and barbering.
19. “Disinfect” means the use of chemicals to kill most microbial life that can lead to infection in humans.
20. “EPA” means the U.S. Environmental Protection Agency.

21. “Establishment” means a business for which the Board has issued a license to a person under A.R.S. §§ 32-326 or 32-541, as applicable.
22. “Establishment suite” means multiple individually operated and licensed establishments that share a physical address except for suite number.
- ~~14-23.~~ “Graduation” or “graduated from a school” means completion of the criteria established by a licensed cosmetology, hairstyling, aesthetics, ~~or~~ nail technology, or barbering school for the course in which the applicant was enrolled including completion of the required curriculum hours.
- ~~15-24.~~ “High school diploma or equivalency” means:
- a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,
  - b. A passing score on a high school equivalency general educational development test or its equivalent as required by the Department of Education,
  - c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or
  - d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.
- ~~16. “Hour” means one clock hour.~~
- ~~17. “Instructor training” means the courses specified in R4-10-302.~~
- ~~18-25.~~ “Licensed in another state of the United States or foreign country” means:
- a. A governmental regulatory agency in the state or country is authorized to examine the competency of individuals who graduate from a licensed cosmetology, hairstyling, nail technology, ~~or~~ aesthetics, or barbering school, or instructors for these disciplines; and
  - b. The governmental regulatory agency issues licenses over which the state or country has regulatory and disciplinary jurisdiction.
- ~~19. “Licensed salon or licensed school” means an establishment for which the Board has issued a license to a person under A.R.S. § 32-541 or 32-551, as applicable.~~
- ~~20-26.~~ “Manager” means an individual who is responsible for ensuring an establishment for which the Board has issued a license to operate complies with A.R.S. §§ 32-501 ~~et seq.~~ Title 32, Chapters 3 and 5, as applicable, and this Chapter.
27. “Mentor,” as defined at A.R.S. §§ 32-301 and 32-501, means an aesthetician, barber, cosmetologist, hair stylist, or nail technician who is approved by the Board to train an individual

in an apprenticeship program that is approved by the Department of Economic Security and occurs at a licensed establishment.

~~21-28.~~ “Model” means an individual or mannequin on which an applicant performs demonstrations for the practical section of a licensing examination.

~~22.~~ ~~“Personal knowledge” means actual observation of an individual who practiced aesthetics, cosmetology, hairstyling, or nail technology in any state or country.~~

~~23-29.~~ “Practice” means engaging in one of the profession disciplines of aesthetics, cosmetology, hairstyling, nail technology, regulated by the Board or engaging as an instructor of one of the disciplines in accordance with the license or registration issued by the Board and Title 32, Chapters 3 and 5, as applicable, and this Chapter.

30. “Owner” means a person that has controlling interest in an establishment or school or the owner’s designee.

~~24-31.~~ “Reciprocity” means the procedure for granting an Arizona license to an applicant who ~~received the required hours from a school licensed in another state of the United States or a foreign country or is currently licensed in another state of the United States or a foreign country.~~

~~25.~~ ~~“Salon suite” means multiple individually operated and licensed salons that share a physical address except for suite number.~~

32. “School” means an educational facility for which the Board has issued a license to a person under A.R.S. §§ 32-325 or 32-551, as applicable.

33. “Student instructor” means an individual who is licensed by the Board in a discipline and training to be an instructor in that discipline.

~~26-34.~~ “Substantive review” means the Board’s process for determining whether an applicant for licensure, registration, or other approval meets the requirements for the license, registration, or other approval for which application is made including, if applicable, taking and passing an examination required by the Board.

~~27-35.~~ ~~“Tenth grade equivalency Two years of high school or its equivalent”~~ means one of the following:

a. ~~Ten high school credits, including two in English, from any school recognized by the basic education authority or the Department of Education in the jurisdiction in which the credits were obtained~~ attained by an individual;

b. If the individual is homeschooled, a copy of the Affidavit of Intent filed with the county school superintendent and proof the individual is at least 16 years old;

~~b.c. Proof the prospective student is of being~~ at least 18 years old. ~~Satisfactory proof of age is shown by a government-issued driver's license or identification card, birth certificate, or passport; or~~

e.d. High school equivalency Obtaining a passing score on a high school equivalency general educational development (GED) test or its equivalent as required by the Department of Education.

~~28. "Transfer application," as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, hairstyling, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.~~

36. "Transfer hours" means hours of study a student completed at one school that a school licensee accepts to meet the requirements at a second school.

~~29-37.~~ "Virtual learning" means the use of technology to teach students who may or may not be physically present in a classroom.

38. "Workstation" means a specific location within an establishment, mobile unit, offsite training facility, or school where services are performed not including hair-cleaning activity.

#### **R4-10-102. Fees and Charges**

A. Cosmetology, aesthetics, hairstyling, and nail technology. Under the specific authority provided by A.R.S. § 32-507 and subject to R4-10-103, the Board establishes and shall collect the following fees:

1. Initial personal license: \$60.00
2. Personal licensing renewal fees: \$60.00
3. Delinquent personal license renewal: \$60 for personal license renewal as specified under subsection (A)(2) plus \$30 for delinquent renewal for every two years or a portion of two years that the license is inactive to a maximum of ~~40~~ five years
4. Personal reciprocity or universal recognition license: \$60.00
5. ~~Salon~~ Establishment initial license: \$110.00
6. ~~Salon~~ Establishment renewal: \$50.00
7. ~~Salon~~ Establishment delinquent renewal: \$80.00
8. School license: \$600.00
9. School renewal: \$250.00
10. Delinquent school renewal: \$350.00

~~B. An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations: Barbering. Under the specific authority provided by A.R.S. § 32-328, and subject to R4-10-103, the Board establishes and shall collect the following fees:~~

1. Barber:

- a. License by reciprocity or universal recognition \$175
- b. Initial license \$40
- c. Renewal valid for two years \$80

2. Instructor:

- a. Initial license \$50
- b. License by reciprocity or universal recognition \$175
- c. Renewal valid for two years \$60

3. Establishment:

- a. Application and initial inspection \$150
- b. Change of location or ownership \$85
- c. Renewal \$50 annually

4. Late-renewal fee for any license issued under subsections (B)(1) through (3):

- a. First time in a five-year period \$25 plus the renewal fee
- b. Second time in a five-year period \$50 plus the renewal fee
- c. Third time in a five-year period \$75 plus the renewal fee

5. School:

- a. Application and initial inspection \$1,000
- b. Change of location or ownership \$500
- c. Renewal \$400 annually
- d. Late-renewal fee:
  - i. First time in five-year period \$50 plus the renewal fee
  - ii. Second time in five-year period \$100 plus the renewal fee
  - iii. Third time in five-year period \$150 plus the renewal fee

C. Eyelash technology. Under the specific authority provided by A.R.S. § 32-507, and subject to R4-10-103, the Board establishes and shall collect the following fees:

- 1. Initial personal registration \$45
- 2. Personal registration renewal \$45

3. Delinquent personal registration renewal: \$45 for personal registration renewal as specified under subsection (C)(2) plus \$30 for delinquent renewal for every two years or a portion of two years that the registration is inactive to a maximum of five years

4. Approval of an eyelash technician training program \$250

**D.** An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.

~~C.E.~~ Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board ~~establishes and~~ shall collect the following charges for the services provided:

1. Board administered educational classes: \$25.00

2. Certification of licensure or hours: \$30.00

3. ~~For~~ Service charge for use of an alternative method of payment a credit or debit card: \$3.00 per transaction

4. For copying public documents: 50¢ per page

5. For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: \$15 per tape, disc, or other medium

6. For a list of licensees' names and mailing addresses: a maximum of 25¢ per name

7. ~~Board-issued duplicate license: \$10.00~~

~~8.7~~ Issuing an updated license following receipt of a notice of ~~salon-suite~~ establishment-suite change: \$20

~~D.F.~~ As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of \$20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

**G.** The Board shall consider a fee payment timely only if the fee is received in the correct amount, in the form specified in R4-10-103(B), and:

1. The Board receives the fee on or before the date due, or

2. The fee is postmarked or electronically submitted on or before the date due.

#### **R4-10-103. Payment of Fees**

A. A fee is not considered paid until the Board receives the amount required in the form specified in subsection (B). The Board shall not provide services, administer examinations, or issue ~~certifications~~ or licenses or registrations until it receives the required fee.

- B. Form of payment.** The Board shall accept: ~~personal check, money order, or credit card only.~~
1. A credit card, money order, or cashier's check as payment of licensing fees for an establishment or school;
  2. A credit card, cashier's check, business check, or money order as payment of a civil penalty; and
  3. A credit or debit card as payment of all other fees and service charges.
- C.** If a ~~check~~ payment for a ~~license~~ renewal is returned because it is dishonored, the renewal application is incomplete; and any license or registration renewal issued is void effective the date the Board ~~mails~~ provides written notice to the licensee or registrant that the license or registration is void.
- D.** An applicant, ~~or licensee,~~ or registrant whose fee payment to the Board is dishonored is not entitled to a further service, ~~certification,~~ or license, or registration until the Board receives the following:
1. The amount of the fee for which the payment was dishonored;
  2. The service charge provided in R4-10-102 ~~(D)~~ (F); and
  3. If applicable, the delinquent fee for each year or part of a year the license or registration was inactive or expired ~~for the type of license to be renewed.~~
- E.** Fees are nonrefundable except if A.R.S. § 41-1077 applies.
- F.** The Board shall not refund fees tendered for fewer than \$5.00 ~~or less~~ over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. §§ 32-328 or 32-507, as applicable.

**R4-10-104. Application for License by Examination Renumbered**

- A.** ~~An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by examination shall submit to the Board:~~
1. ~~The fee required for an initial personal license in R4-10-102; and~~
  2. ~~An application provided by the Board that contains:~~
    - a. ~~A passport quality photo of the applicant;~~
    - b. ~~The applicant's name, address, e-mail address, telephone number, Social Security number, gender, and birth date;~~
    - c. ~~The name and address of each licensed school attended by the applicant;~~
    - d. ~~The name of course completed, the name of the school where completed, and the starting date and date of graduation;~~
    - e. ~~If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;~~

- f. ~~A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country;~~
  - g. ~~A statement by the applicant verifying the truthfulness of the information provided by the applicant; and~~
  - h. ~~The applicant's signature; and~~
3. ~~Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.~~
- B.** ~~In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, or nail technology license by examination shall:~~
- 1. ~~Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting documentation of 10th grade equivalency;~~
  - 2. ~~Comply with A.R.S. § 32-510, 32-511, 32-512, or 32-512.01 by submitting a copy of one of the following:~~
    - a. ~~If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours;~~
    - b. ~~If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation;~~
    - e. ~~If the applicant completed an apprenticeship program as described under A.R.S. § 32-511(3)(e), ensure the Department of Economic Security provides notice to the Board that the applicant completed the described program; and~~
    - d. ~~Comply with R4-10-102 regarding examination fees.~~
- C.** ~~In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:~~
- 1. ~~Comply with A.R.S. § 32-531 by submitting the following:~~
    - a. ~~Documentation, as specified in subsection (C)(3), of required work experience;~~
    - b. ~~Proof of current licensure in the profession in which work experience was gained;~~
    - e. ~~Proof of licensure during the period work experience was gained; and~~
    - d. ~~Proof of attainment of 18 years of age; or~~

- e. ~~Proof of high school equivalency.~~
- 2. ~~If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:~~
  - a. ~~Certification of graduation from a licensed school, on a form supplied by the Board, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and~~
  - b. ~~If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and~~
- 3. ~~Documentation of the work experience required by A.R.S. § 32-531, which shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:~~
  - a. ~~Profession in which applicant gained the experience;~~
  - b. ~~Starting and ending dates of applicant's experience in the profession;~~
  - c. ~~Name of licensed salon and address where applicant gained experience in the profession; and~~
  - d. ~~License number and name of the licensed individual completing the form; or~~
  - e. ~~Name, address, and telephone number of the individual providing the information.~~

**R4-10-105. ~~Application for License by Reciprocity; Application for License by Universal Recognition~~ Renumbered**

- A.** ~~An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:~~
  - 1. ~~An application provided by the Board and signed by the applicant that contains:~~
    - a. ~~The applicant's name, address, e-mail address, telephone number, gender, Social Security number, and birth date;~~
    - b. ~~A passport quality photo of the applicant;~~
    - c. ~~If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license;~~

- d. ~~A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country; and~~
  - e. ~~A statement by the applicant verifying the truthfulness of the information provided by the applicant;~~
  - 2. ~~A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure; and~~
  - 3. ~~Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.~~
- B.** ~~An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or instructor license by universal recognition, as described at A.R.S. § 32-4302, shall submit the applicable fee required in R4-10-102 and all of the following to the Board:~~
- 1. ~~An application provided by the Board and signed by the applicant that contains:~~
    - a. ~~The applicant's name, address, e-mail address, telephone number, gender, Social Security number, and birth date;~~
    - b. ~~A passport quality photo of the applicant; and~~
    - c. ~~A statement by the applicant verifying the truthfulness of the information provided by the applicant;~~
  - 2. ~~A list of all states in which the applicant is currently licensed and certification from the licensing states that the applicant's license is in good standing;~~
  - 3. ~~Proof of Arizona residency; and~~
  - 4. ~~Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.~~

**R4-10-106. Licensing Time Frames**

- A. The overall, administrative completeness, and substantive review time frames described in A.R.S. § 41-1072 for each type of license, registration, or approval granted by the Board are listed in ~~Table 1~~ Tables A1 and B1, as applicable. The applicant and Executive Director of the Board may agree in writing to extend the overall time frame. The substantive review time frame may not be extended by more than 25 percent of the overall time frame.

- B.** The administrative completeness review time frame begins when the Board receives an application packet.
1. If an application packet is incomplete, the Board shall send ~~to~~ the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time frame and the overall time frame are suspended from the ~~postmark~~ date of the notice until the date the Board receives a complete application packet from the applicant.
  2. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
  3. If the Board grants a license, registration, or approval during the administrative completeness time frame, the Board shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time frame begins on the ~~postmark~~ date of notice of administrative completeness.
1. As part of the substantive review for a license to operate a school, the Board shall conduct an inspection that may require more than one visit to the school.
  2. During the substantive review time frame, the Board may make one comprehensive written request for additional information or documentation. If the applicant has applied for licensure by examination, the Board ~~shall~~ may request evidence of passing the required examination ~~required under R4-10-108~~. The time frame for the Board to complete the substantive review is suspended from the ~~postmark~~ date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
  - ~~3. If an applicant meets the requirements of A.R.S. Title 32, Chapter 5 and this Chapter, the Board shall send written notice granting a license to the applicant.~~
  - ~~4.3~~ If an applicant does not meet the requirements of A.R.S. Title 32, Chapter 3 or 5, as applicable, and this Chapter, the Board shall send a written notice denying a license, registration, or approval to the applicant. The Board shall include in the notice of denial the basis for the denial and an explanation of the applicant's right to appeal under A.R.S. Title 41, Chapter 6, Article 10.
- D.** The Board shall consider an application withdrawn if within ~~180~~ 90 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(2).
- E.** An individual shall not practice as an aesthetician, cosmetologist, hairstylist, instructor, ~~or~~ nail technician, barber, or eyelash technician until the individual receives and posts the license or registration issued by the Board at the individual's place of employment.

~~F. If the last day of a time frame falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the last day of the time frame.~~

**R4-10-107. License Renewal Renumbered**

~~A. An aesthetician, cosmetologist, hairstylist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.~~

~~1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.~~

~~2. A renewal application consists of:~~

~~a. A form provided by the Board that contains the licensee's name, address, e-mail address, Social Security number, and signature;~~

~~b. A copy of a government-issued identification containing a photograph of the licensee;~~

~~c. If the documentation previously submitted under R4-10-104(A)(3) or R4-10-105(3) did not establish citizenship in the United States or was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the licensee's presence in the United States continues to be authorized under federal law;~~

~~d. A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and~~

~~e. The fee required in R4-10-102.~~

~~B. An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal on or before the license renewal date.~~

~~1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.~~

~~2. A renewal application consists of:~~

~~a. A form provided by the Board that contains:~~

~~i. The establishment's name;~~

~~ii. The licensee's license number; and~~

~~iii. If the licensee is an individual or partnership, the signature and tax identification number of the licensee or if the licensee is a corporation or limited liability company, the~~

~~signature of the authorized signer and the tax identification number of the corporation or limited liability company; and~~

b. ~~The fee required in R4-10-102.~~

**R4-10-108. ~~Pre-screening Review; Licensing Examination Repealed~~**

- ~~A. A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a licensed school but the student shall not be issued an examination date until the student has completed a minimum of:~~
- ~~1. 1450 hours of cosmetology training,~~
  - ~~2. 750 hours of hairstyling training,~~
  - ~~3. 500 hours of aesthetics or nail technology training, or~~
  - ~~4. 350 hours of cosmetology, hairstyling, aesthetics, or nail technology instructor training.~~
- ~~B. After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.~~
- ~~C. If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.~~
- ~~D. A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.~~
- ~~E. The Board or national professional organization with which the Board contracts to administer the licensing examination shall provide written notice to an applicant of the date, time, and location for the examination.~~
- ~~F. An applicant shall provide photographic identification when entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.~~
- ~~G. The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration on a model during the practical section of the licensing examination.~~

- ~~H. If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.~~
- ~~I. An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.~~
- ~~J. Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.~~
- ~~K. An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.~~
- ~~L. If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.~~
- ~~M. If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:~~
- ~~1. Is the same national examination administered in Arizona;~~
  - ~~2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and~~
  - ~~3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.~~
- ~~N. The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct the practical section of the licensing examination in English and an applicant shall submit answers in English. The written section of the licensing examination is conducted in languages specified by the national professional organization and chosen by the applicant.~~

**R4-10-110. ~~Reactivating an Inactive License~~ Renumbered**

- ~~A. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.~~
- ~~B. A cosmetology, hairstyling, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than 10 years, may be reactivated by the inactive licensee paying the delinquent renewal fee, as described in R4-10-102(A)(3), and paying for and completing the infection protection class and law review class, offered by the Board.~~
- ~~C. If a cosmetology, hairstyling, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the inactive licensee shall pay 10 years of delinquent renewal fees and comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.~~

**R4-10-111. Display of Licenses, Registrations, and Signs**

- A. An establishment or school licensee shall ensure the name on the establishment's or school's sign, advertising, and publications is the same as the name on the license to operate the establishment or school issued by the Board. The establishment's or school's sign shall be prominently posted in view of the public.
- B. A school licensee shall:
  - ~~1. Prominently post a course schedule that lists the names of instructors and courses; and~~
  - ~~2.1. Display the licenses of the school licensee and all instructors near the school entrance, visible to the public; and~~
  - 2. Ensure that if "accredited," "approved," or a similar term appears in the school catalog, publication, or advertisement, the name of the accrediting or approving organization is provided.
- C. ~~A salon~~ An establishment licensee shall:
  - 1. Prominently post the license of the ~~salon~~ establishment licensee in view of the public, and
  - 2. Ensure that the personal license or registration of each licensee or registrant performing services in the ~~salon~~ establishment is posted at the licensee's or registrant's ~~work station~~ workstation.
- D. A licensee or registrant performing mobile services shall prominently display, in view of the public and in the area where mobile services are provided:
  - 1. A ~~photocopy duplicate~~ of the licensee's or registrant's personal license or registration ~~the licensee's Board-issued, wallet-size license card, and~~
  - 2. A ~~photocopy duplicate~~ of the Board-issued license to operate ~~a salon~~ an establishment ~~or Board-issued, wallet-size license card to operate a salon.~~

- E. A copy of R4-10-112 shall be prominently posted in each establishment and school.
- F. If applicable, ~~a salon~~ an establishment licensee shall prominently post a sign, in view of the public, that reads: “These services are not regulated by the Arizona Barbering and Cosmetology Board ~~Arizona Board of Cosmetology~~” and include a list of services provided but not regulated.
- G. Display of barber pole.
1. Under A.R.S. § 32-355(A)(4), it is unlawful to display a sign or advertise as being engaged in the practice or business of barbering without being licensed under A.R.S. Title 32, Chapter 3, and this Chapter.
  2. The Board has trademarked through the Office of the Secretary of State the barber pole as a sign of the barbering business.
  3. A business shall not display a barber pole unless a barber licensed under A.R.S. Title 32, Chapter 3, and this Chapter is available to provide barbering services during the business hours the barber pole is displayed.

#### **R4-10-112. Infection Control and Safety Standards**

- A. ~~An~~ The holder of an establishment licensee or school license issued under A.R.S. Title 32, Chapter 3 or 5, and this Chapter, shall ensure the establishment or school has and maintains the following minimum equipment and supplies:
1. Non-leaking, solid-side waste receptacles with liners, which are emptied, cleaned, and disinfected daily;
  2. Ventilated, covered, containers for soiled linens including towels and capes;
  3. Covered, clean containers or cabinets to hold clean linens including towels and capes;
  4. Covered, wet disinfectant container that:
    - a. Is set up with disinfectant solution at all times the establishment or school is open, and
    - b. Is changed as determined by the manufacturer’s instructions or when visibly cloudy or contaminated; and
  5. An ~~Environmental Protection Agency (EPA)~~ EPA-registered bactericidal, virucidal, or fungicidal, disinfectant effective against HIV and human hepatitis B virus, which shall be mixed and used according to manufacturer’s directions on all tools, instruments, and equipment.
- B. Procedure for disinfecting non-electrical equipment. A licensee, registrant, or student shall disinfect non-electrical equipment by:
1. Cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and

2. Totally immersing in the wet disinfectant required under subsection (A)(5) following manufacturer's recommended directions.
- C. Procedure for storing tools and instruments. A licensee, registrant, or student shall:
1. Place a tool or instrument that has been used on a client or soiled in any manner in a covered receptacle that is labeled "dirty"; and
  2. Place a disinfected instrument in a disinfected, dry, covered container that is labeled "ready to use" and isolate the disinfected instrument from contaminants.
- D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use. A licensee, registrant, or student shall disinfect electrical equipment by:
1. Removing all foreign matter from the equipment;
  2. Cleaning and spraying or wiping with an EPA-registered bactericidal, virucidal, or fungicidal disinfectant, compatible with electrical equipment, as required in subsection (A)(5), ensuring the electrical equipment is in contact with the disinfectant for the time specified on the disinfectant label;
  3. Storing the disinfected electrical equipment in a clean place separated from cords for the electrical equipment; and
  4. If the electrical equipment has removable parts, disinfecting the removed parts as described in subsection (B).
- E. Tools, instruments, and supplies. A licensee, registrant, or student shall:
1. Dispose of all tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) by placing them in a waste receptacle immediately after use;
  2. Not store or carry disinfected tools and instruments in a leather or cloth pouch or pocket;
  3. Dispose of a sharp ~~cosmetology~~ tool or instrument by sealing the tool or instrument in a rigid, puncture-proof container and disposing in a manner that keeps licensees, registrants, students, clients, and sanitation workers safe;
  4. Not place clips or other tools and instruments in the mouth, pocket, or other holder that cannot be cleaned and disinfected;
  5. Sharpen pencil cosmetics before each use and clean and disinfect the sharpener after each use; and
  6. A client's personal ~~cosmetology~~ tools and instruments that are brought into and used in the establishment shall comply with these rules.

- F. If there is exposure to blood or other body fluids during a service, a licensee, registrant, or student shall stop the service and:
1. If the wound is on the licensee's, registrant's or student's hand, the licensee, registrant, or student shall:
    - a. Clean the wound with an antiseptic solution;
    - b. Cover the wound with a sterile bandage; and
    - c. Cover the wounded area with a glove or finger cover;
  2. Discard all blood-stained tissue or cotton or other blood-contaminated material;
  3. Disinfect all equipment, tools, and instruments that came in contact with blood or other body fluids as discussed in subsections (A)(5) and (B); and
  4. Disinfect electrical equipment as discussed in subsection (D).
- G. An establishment or school licensee shall ensure all circulating and non-circulating tubs or spas are cleaned as follows:
1. After each client or service, complete ~~all of~~ the following:
    - a. Drain the tub; and
    - b. Remove and discard a used tub liner and replace the used tub liner with a new, unused tub liner; or
    - ~~b.c.~~ c. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line, rinse the tub and fill with disinfectant listed in subsection (A)(5), and allow the disinfectant to stand or circulate for the time specified in the manufacturer's instructions;
    - ~~e.~~ d. Rinse the tub;
    - ~~d.~~ e. Fill the tub with water and disinfectant as in subsection (A)(5); and
    - ~~e.~~ f. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.
  2. At the end of the day, complete all of the following:
    - a. Drain the tub;
    - b. Remove all filters, screens, drains, jets, and other removable parts;
    - c. Scrub all removed parts with a brush and soap or detergent until free from debris;
    - d. Rinse the removed parts;
    - e. Completely immerse the removed parts in the disinfectant listed under subsection (A)(5);
    - f. Rinse the tub;
    - g. Replace the disinfected parts;

- h. Fill the tub with clean water and the amount of disinfectant proper for the volume of water;
- i. Circulate the water and disinfectant for the full contact time listed on the manufacturer's label. If the ~~tub~~ tub does not have jets, allow the water and disinfectant to stand for the full contact time listed on the manufacturer's label; and
- j. Drain the tub.

**H.** Personal cleanliness. A licensee, registrant, or student shall:

- 1. Thoroughly wash his or her hands with soap and warm water or any equally effective hand sanitizer immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;
- 2. Wash a client's skin on which services will be performed with soap and warm water or wipe the skin with waterless hand sanitizer approved for use on skin before a nail technology service, including a pedicure service, is provided; and
- 3. Wear clean, fluid-proof, single-use, protective gloves while performing any service if any bodily discharge is present from the licensee, registrant, student, or client or if any discharge is likely to occur from the client because of services being performed. Discard gloves immediately after use.

**I.** Disease and infestation. A licensee, registrant, or student shall not perform a service on an individual:

- 1. Who has a contagious disease that may be transmitted by the performing of the service on the individual; or
- 2. Who is exhibiting a sign of infection such as reddened, erupted, or open skin.

**J.** Client protection. A licensee, registrant, or student shall:

- 1. Protect a client's clothing from direct contact with shampoo bowls or headrests by using clean linens, capes, robes, or protective neck strips;
- 2. Maintain infection control and perform services safely;
- 3. Use bracing when performing a service around a client's eyes, ears, lips, fingers, and toes; and
- 4. ~~Provide~~ When applicable, provide a client a pre- and post-analysis that includes appropriate instructions for follow-up.

**K.** Care and storage of linens including towels, robes, and capes. An establishment licensee shall ensure:

- 1. Clean linens are provided for each client and laundered after each use;
- 2. Soiled linens are stored in a ventilated receptacle;
- 3. Laundering includes washing linens using detergent and bleach; and
- 4. Clean linens are stored in covered containers or closets.

**L.** Care and storage of products including liquids, creams, oils, gels, antiseptics, clay, ointments, waxes, powders, cosmetics, chemicals, and disinfectants. An establishment licensee shall ensure:

1. All products are stored in a container that is clean and free of corrosion, labeled to identify contents, and in compliance with state and local laws and manufacturer's instruction;
  2. All products containing poisonous substances are distinctly marked;
  3. When only a portion of a ~~cosmetic~~ product is to be used, the portion is removed from the container in a way that does not contaminate the remaining product; and
  4. Once dispensed, a product is not returned to the original container.
- M.** Prohibited hazardous substances and use of products. An establishment licensee shall ensure:
1. No ~~cosmetic~~ products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in ~~cosmetic~~ products on clients, including liquid methyl methacrylate monomer and methylene chloride, are on the establishment premises;
  2. All products are used only in a manner approved by the FDA, EPA, or other regulatory agency; and
  3. Instructions on the manufacturer's label are followed at all times.
- N.** Care of headrests, shampoo bowls, and treatment tables. An establishment licensee shall ensure:
1. Headrests of chairs and treatment tables are disinfected at least daily;
  2. Treatment tables are covered with a clean linen or paper sheet for each client;
  3. Shampoo bowls and neck rests are cleaned with soap and warm water or other detergent and disinfected after each use and kept in good repair; and
  4. Shampoo neck rests are disinfected with a solution listed under subsection (A)(5) before each use.
- O.** Prohibited devices, tools, or chemicals; invasive procedures. An establishment licensee shall ensure:
1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are not present in or used in ~~a salon~~ an establishment:
    - a. A ~~device~~ device, tool, or chemical designed or used to pierce the dermis; and
    - b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
  2. A licensee or registrant that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law, complies with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.
- P.** Skin peeling. A licensee shall:
1. Except as provided in subsection (O)(2), remove only the non-living, uppermost layer of skin, known as the epidermis, by any method or means and only for the purpose of beautification;
  2. Not use a skin removal technique or practice that affects the dermal layer of the skin;

3. Not mix or combine skin removal products except as required by manufacturer instructions and approved by the FDA; and
4. Use only commercially available products for the removal of epidermis for the purpose of beautification.

**Q.** Restricted use tools and instruments. A licensee shall use:

1. Nippers only to remove loose cuticles; and
2. Pre-sterilized, disposal lancets only to dilate follicles and release sebaceous debris from the follicle.

**R.** Lash use and storage. A cosmetology or aesthetics licensee or registrant shall:

1. Have at the lashing workstation a covered, wet disinfectant container large enough to submerge tools completely;
2. Clean hands between clients;
3. Perform all lash services using clean or clean-gloved hands;
4. Store lashes in the original tray or jar in a covered container that is free from debris or contaminants;
5. Dispense lashes from the original tray or jar using only a disinfected tool;
6. Not return a lash to the original tray or jar after the lash is dispensed from the original tray or jar;
7. Spray and wipe the lash workstation with an EPA-registered disinfectant after each client;
8. Disinfect all cutting implements after use and store the disinfected cutting implements in a covered container that is free from debris or contaminants;
9. Keep tape dispensers inside a labeled, clean, closed drawer; and
10. Disinfect lash tweezers, adhesive stones, lash tiles, lash pallets, lash cases, and other items between clients.

**R.S.** An establishment licensee shall maintain cleanliness and repair of the establishment according to the following guidelines:

1. Discard hair and nail clippings immediately after each client;
2. Clean and disinfect shampoo bowls using a disinfectant listed under subsection (A)(5) and ensure drains are free running;
3. Disinfect counters and all work areas after each client by using a disinfectant discussed in subsection (A)(5).

**S.T.** An establishment licensee, including the licensee of ~~a salon~~ an establishment in a residence, shall ensure compliance with the following building standards:

1. There is an entrance into the establishment from the outside. If the establishment is ~~a salon~~ in a residence, the entrance may be through living quarters;
2. Except for ~~a salon~~ an establishment in a residence, an establishment shall not be used for residential or other living purposes;
3. The establishment has a restroom open and available for employees' and clients' use during business hours. The restroom has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; and is in close enough proximity to the establishment to ensure safety for ~~cosmetology~~ procedures during use;
4. Extra material stored in the establishment restroom is locked in a cabinet;
5. The establishment, including a mobile unit, has sufficient hot and cold running water; and
6. The establishment has ~~a~~ natural or mechanical ventilation and an air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.

**F.U.** An establishment licensee shall ensure compliance with the following general requirements.

1. A first-aid kit that contains, at a minimum, bandages, gauze, antiseptic, and antibiotic cream; is present in the establishment and easily accessible;
2. ~~Only~~ No animals except fish in aquariums and service animals; are allowed in the establishment; and
3. The establishment complies with federal and state requirements.

#### **R4-10-113.     Establishment and School Management**

**A.** ~~The manager of an~~ An establishment or school licensee shall ensure:

1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed in view of the public;
2. ~~The establishment and all~~ All licensees or registrants in ~~a salon~~ the establishment, school, or a mobile service area have current licenses or registrations;
3. Infection control and safety standards are maintained; and
4. If the establishment or school closes, the licensee or authorized representative notifies the Board within 10 days by completing a form that is available on the Board's website.

- B. The Board shall hold the establishment or school licensee ~~and manager or director~~ responsible for all violations of requirements ~~enumerated~~ in subsection (A) that occur within the establishment or school.
- C. If ~~a salon~~ an establishment licensee rents or leases space within the ~~salon~~ establishment to a person who obtains a separate license to operate ~~a salon~~ an establishment, the Board shall hold the second licensee ~~and manager~~ responsible for all violations of requirements ~~enumerated~~ in subsection (A) that occur within the portion of the ~~salon~~ establishment the second licensee is licensed to operate.

**R4-10-114. Board Inspection**

- A. A licensee or manager of an establishment or school shall permit a Board inspector or representative to inspect the premises of the establishment or school regardless of whether the establishment or school has been identified in a complaint.
- B. A Board inspector or representative may inspect:
  1. ~~may inspect the~~ The premises of a location alleged to be operating as ~~a salon~~ an establishment or school without a license from the Board;
  2. The premises of each establishment at least once during every two years; and
  3. An establishment or school at any time allowed under A.R.S. §§ 32-304(B), 32-325, 32-542, and 32-562.
- C. ~~Board action is required to dismiss a complaint.~~ Inspection procedure. According to the requirements of A.R.S. Title 32, Chapters 3 and 5, and this Chapter, the Board inspector or representative shall document that:
  1. The establishment or school complies with R4-10-111(C) through (G);
  2. All required equipment and implements necessary to provide services are present, clean, in good working order, and in appropriate quantity to the number of establishment employees;
  3. All procedures, including those in R4-10-112, are followed by establishment and school employees; and
  4. All applicable statutes and rules are followed.
- D. Inspection findings. The Board inspector or representative shall provide a copy of a completed inspection report to the licensee or manager of the establishment or school and the Board.
- E. Disciplinary action. The Board shall follow disciplinary procedures established under A.R.S. §§ 32-352 through 32-356 or 32-571 through 32-576 for any inspection finding indicating a violation of any provision of A.R.S. Title 32, Chapters 3 or 5, or this Chapter.

**R4-10-115. Rehearing or Review of a Board Decision**

- A.** The Board shall provide for a rehearing or review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a Board decision, within 30 calendar days after service of the decision, to exhaust the party's administrative remedies.
- C.** A motion for rehearing or review may be amended at any time before it is ruled on by the Board. A response may be filed within 15 calendar days after service of a motion or amended motion by any party. The Board may require the filing of written briefs regarding the issues raised in the motion and may provide for oral argument.
- D.** The Board may grant a rehearing or review for any of the following causes materially affecting the moving party's rights:
  - 1. Irregularity in the administrative proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
  - 2. Misconduct of the Board or its staff, an administrative hearing officer, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; or
  - 7. A decision that is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify the decision or grant a rehearing or review to any of the parties on all or part of the issues for any of the reasons in subsection (D). The Board shall specify the particular grounds for any order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- F.** No later than 30 calendar days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party.

The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.

- G.** When a motion for rehearing or review is based on affidavits, they shall be served with the motion. An opposing party may, within 20 calendar days after service, serve opposing affidavits. This time may be extended for an additional period not exceeding 20 calendar days by the Board when there is a showing of good cause or written stipulation of the parties. Reply affidavits may be permitted.
- H.** If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve public peace, health, or safety and that a rehearing or review of the decision is impractical, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for rehearing or review.
- I.** A Board order is final on expiration of the time for filing a motion for review or rehearing or on denial of a motion for review or rehearing, whichever is later. A party that has exhausted the party’s administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.
- J.** A person that files a complaint with the Board against a licensee or registrant:
  - 1. Is not a party to:
    - a. A Board administrative action, decision, or proceeding; or
    - b. A court proceeding for judicial review under A.R.S. Title 12, Chapter 7, Article 6; and
  - 2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

**Table 1. Time Frames (in days) Renumbered**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time Frame</b>	<b>Administrative Completeness Time Frame</b>	<b>Substantive Review Time Frame</b>
License by Examination	A.R.S. §§ <del>32-510,</del> <del>32-511, 32-512,</del> <del>32-512.01,</del> <del>32-531</del>	90	60	30
License by Reciprocity or Universal	A.R.S. §§ <del>32-513,</del> <del>32-532, 32-4302</del>	60	30	30

Recognition				
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 32-544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

### PART A. BARBERING

#### **R4-10-501. R4-10-A101. Definitions**

The definitions in A.R.S. § 32-301 apply to this Chapter. Additionally, the The following definitions apply to this Chapter unless the context otherwise requires:

~~“Barber pole” means a stationary or revolving sign compose of a vertical cylinder or pole with alternating, diagonal, stripes of any combination including red, white, and blue or a likeness of the sign.~~

“Barbering implement” means any tool or device used for barbering.

~~“Certified hour” means instructional hours for which a barber school has issued a student a Certification of Completion or Withdrawal.~~

~~“Change of ownership” means there is a change of 10 percent or more of the owners holding a license to operate a shop or school.~~

~~“Diploma from a high school or its equivalent,” as used in A.R.S. § 32-323(B), means any of the following:~~

~~A document that certifies successful course completion from any accredited secondary school in the United States, a U.S. territory, the District of Columbia, or a foreign country;~~

~~A high school equivalency diploma that certifies successful passing of a General Education Development “GED” test; or~~

~~An academic degree from an accredited college or university.~~

~~“Direct supervision” means a supervisor is physically present and observing the work of a supervisee.~~

~~“Disinfect” means the use of chemicals to kill most microbial life that can lead to infection in humans.~~

~~“Domestic administration,” as used in A.R.S. § 32-321, means barbering performed a licensee performs barbering on the licensee or another person to whom the licensee is related by blood, marriage, or state action.~~

~~On oneself, or~~

~~On another person to whom the practitioner is related as follows:~~

~~Father,~~

~~Mother,~~

~~Grandfather,~~

~~Grandmother,~~

~~Child,~~

~~Step-child,~~

~~Brother,~~

~~Sister,~~

~~Foster parent,~~

~~Legal guardian,~~

~~Step-parent, or~~

~~Spouse.~~

~~“EPA” means the United States Environmental Protection Agency.~~

~~“Establishment” means a distinct physical location in which a shop or school is located but does not include an offsite training facility.~~

~~“Instructional hour” means 60 minutes during which a student receives classroom or practical instruction.~~

~~“Liquid sanitizer” means a container large enough to immerse completely any barbering implement that requires disinfecting by a solution made from an EPA-registered disinfectant.~~

~~“One year’s experience as a licensed barber,” as used in A.R.S. § 32-322(C), means that during 12 consecutive months, an individual: Maintained maintained a valid license prescribed issued under A.R.S. § 32-322, and Engaged engaged in barbering at least 1,500 hours.~~

~~“Owner” means a person that has controlling interest in a barber shop or school or the owner’s designee.~~

~~“Patron” means an individual who receives barbering services.~~

~~“Practiced barbering for at least two years,” as used in A.R.S. § 32-323(B), means that during 24 consecutive months, an individual engaged in barbering at least 1,500 hours during each 12-month consecutive period.~~

~~“Tool drawer” means an ultraviolet electrical sanitizer or a clean, dust-proof cabinet, drawer, or other container that is disinfected with an EPA-registered disinfecting agent and used exclusively to store disinfected barbering implements.~~

~~“Two years of high school education or its equivalent,” as used in A.R.S. § 32-322(B), means either of the following:~~

~~Successfully completing 10 high school credits, or~~

~~Passing a GED test.~~

~~“Workstation” means a specific location within a shop, mobile unit, offsite training facility, or school where barbering is performed not including hair cleaning activity.~~

**Table 1. Table A1. Time Frames (in days)**

<b>License</b>	<b>Authority</b>	<b>Overall Time Frame</b>	<b>Administrative Time Frame</b>	<b>Time to Respond</b>	<b>Substantive Time Frame</b>	<b>Time to Respond</b>
Barber	A.R.S. §§ 32-322; 32-327	28	21	90	7	30
<u>License by reciprocity or universal recognition</u>	<u>A.R.S. §§ 32-328; 32-4302</u>	<u>28</u>	<u>21</u>	<u>90</u>	<u>7</u>	<u>30</u>
Instructor	A.R.S. §§ 32-323; 32-327	28	21	90	7	30
School	A.R.S. §§ 32-325;	90	30	30	60	60

	32-327					
Establishment	A.R.S. §§ 32-326; 32-327	90	30	30	60	60

**PART B. COSMETOLOGY**

**Table 1. Table B1. Time Frames (in days)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time Frame</b>	<b>Administrative Completeness Time Frame</b>	<b>Substantive Review Time Frame</b>
License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, 32-512.01, 32-531	90	60	30
<u>Registration as Eyelash Technician</u>	<u>A.R.S. § 32-519</u>	<u>45</u>	<u>15</u>	<u>30</u>
License by Reciprocity or Universal Recognition	A.R.S. §§ 32-513, 32-532, 32-4302	60	30	30
School License	A.R.S. § 32-551	90	30	60
<u>Approval of an Eyelash Technician Training Program</u>	<u>A.R.S. § 32-519</u>	<u>60</u>	<u>20</u>	<u>40</u>
License or <u>Registration Renewal</u>	A.R.S. §§ 32-517, <u>32-519</u> , 32-535, 32-544, 32-564	75	45	30
<u>Salon Establishment</u> License	A.R.S. §§ 32-541, 32-542	90	30	60

License Reactivation	A.R.S. § 32-518	30	15	15
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**ARTICLE 2. SCHOOLS PERSONAL licensure OR REGISTRATION**

**~~R4-10-105.~~ R4-10-201. Application for License by Reciprocity; Application for License by Universal Recognition**

**A.** An applicant for an aesthetics, cosmetology, hairstyling, nail technology, barber, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application ~~provided by form available on the Board~~ Board's website and signed by the applicant that contains:

a. The applicant's name, ~~address~~ full mailing, physical, and e-mail addresses, ~~e-mail address~~, telephone number, ~~gender~~, Social Security number, and birth date;

~~b. A passport-quality photo of the applicant;~~

~~e.b.~~ If previously licensed by the Board, the type of license, license number, license expiration date, and ~~the~~ name used on the license;

~~e.c.~~ A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, barber, or instructor license suspended or revoked in any state of the United States or foreign country; and

~~e.d.~~ A statement by the applicant verifying the truthfulness of the information provided by the applicant ~~The applicant's signature and verification the information provided is true and correct;~~

2. A passport-style photo of the applicant;

~~2.3.~~ A certification of hours and proof of graduation or licensure in another state of list of states in the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure countries in which the applicant is or was previously licensed or authorized to practice barbering, hairstyling, nail technology, aesthetics, or cosmetology and satisfactory evidence of an active license or authorization in good standing; and

~~3.4.~~ Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

**B.** In addition to the requirements in subsection (A), under A.R.S. § 32-322, an applicant for a barber or barber instructor license by reciprocity shall:

1. If licensed in another state of the United States, submit evidence of compliance with A.R.S. § 32-322(C); or

2. If licensed or otherwise authorized to practice barbering by a foreign country, submit evidence of compliance with A.R.S. § 32-322(D).

**C.** In addition to the requirements in subsection (A), under A.R.S. § 32-532, an applicant for a cosmetology, aesthetics, nail technology, or hairstyling instructor license by reciprocity shall submit evidence of the experience required under A.R.S. § 32-532(2).

**B.D.** An applicant for an aesthetics, cosmetology, hairstyling, nail technology, barber, or instructor license who meets the requirements specified at A.R.S. § 32-4302 is eligible for licensure by universal recognition, as described at A.R.S. § 32-4302, . To apply for licensure by universal recognition, an applicant shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application ~~provided by form available on the Board Board's website and signed by the applicant~~ that contains:

a. The applicant's name, ~~address, full mailing, physical, and e-mail addresses, e-mail address,~~ telephone number, ~~gender,~~ Social Security number, and birth date;

b. ~~A passport quality photo of the applicant;~~ and

~~e.b. A statement by the applicant verifying the truthfulness of~~ The applicant's signature and verification the information provided by the applicant is true and correct;

2. A passport-style photo of the applicant;

~~2.3.~~ A list of all states in which the applicant is currently and has been licensed for at least one year and certification from the licensing states that the applicant's license is in good standing; and

~~3.4.~~ Proof of Arizona residency; and

4. ~~Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.~~

**R4-10-104. R4-10-202. Application for a Cosmetology, Aesthetics, Hairstyling, Nail Technology, or Barber License by Examination**

**A.** An applicant for an aesthetics, cosmetology, hairstyling, nail technology, or ~~instructor~~ barber license by examination shall submit to the Board:

1. The fee required for an initial personal license in R4-10-102;

2. ~~A passport style~~ passport-style photo of the applicant; and

~~2.3.~~ An application ~~provided by form available on the Board~~ Board's website that contains:

- ~~a.~~ A passport quality photo of the applicant;
- ~~b.~~a. The applicant's name, ~~address~~ full mailing and physical addresses, e-mail address, telephone number, Social Security number, ~~gender~~, and birth date;
- ~~e.~~b. The name and address of each licensed school attended by the applicant;
- ~~d.~~c. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
- ~~e.~~d. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
- ~~f.~~e. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or ~~instructor~~ barber license suspended or revoked in any state of the United States or foreign country; and
- ~~g.~~ A statement by the applicant verifying the truthfulness of the information provided by the applicant; and
- ~~h.~~f. The applicant's signature verifying the information provided is true and correct; and

~~3.4.~~ Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

**B.** In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, cosmetology, hairstyling, ~~or~~ nail technology, or barber license by examination shall:

1. Comply with A.R.S. § ~~32-322~~, 32-510, 32-511, 32-512, or 32-512.01 by submitting documentation of ~~10th grade equivalency~~ two years of high school or its equivalent;
2. Comply with A.R.S. § ~~32-322~~, 32-510, 32-511, 32-512, or 32-512.01 by submitting a copy of one of the following:
  - a. If the applicant graduated from a course presented by a school licensed by the Board, a ~~written statement~~ copy of the certificate of graduation signed by the administrator of the school that documents proof of graduation and completion of all required hours required under R4-10-305(E);
  - b. If the applicant attended more than one ~~licensed~~ school in Arizona, a copy of a ~~transfer application or certification~~ certificate of hours from each school attended ~~that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation, as required under R4-10-305(E)~~;

- c. ~~If the applicant completed an apprenticeship program as described under A.R.S. §32-322, 32-510(A)(2)(c), 32-511(A)(3)(c), 32-512(A)(3)(c), or 32-512.01(A)(3)(c), ensure the Department of Economic Security provides notice to the Board that the applicant completed the described program a notice of completion from the Department of Economic Security;~~
  - d. If the applicant graduated from a course presented by a school in another state or country, evidence the school's requirements at the time the applicant graduated were substantially the same as those required by the Board; and
  - ~~e. Comply with R4-10-102 regarding examination fees.~~
- ~~C. In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:~~
- ~~1. Comply with A.R.S. § 32-531 by submitting the following:
 
    - a. ~~Documentation, as specified in subsection (C)(3), of required work experience;~~
    - b. ~~Proof of current licensure in the profession in which work experience was gained;~~
    - c. ~~Proof of licensure during the period work experience was gained; and~~
    - d. ~~Proof of attainment of 18 years of age; or~~
    - e. ~~Proof of high school equivalency.~~~~
  - ~~2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:
 
    - a. ~~Certification of graduation from a licensed school, on a form supplied by the Board, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and~~
    - b. ~~If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and~~~~
  - ~~3. Documentation of the work experience required by A.R.S. § 32-531, which shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
 
    - a. ~~Profession in which applicant gained the experience;~~
    - b. ~~Starting and ending dates of applicant's experience in the profession;~~
    - c. ~~Name of licensed salon and address where applicant gained experience in the profession; and~~
    - d. ~~License number and name of the licensed individual completing the form; or~~~~

- e. ~~Name, address, and telephone number of the individual providing the information.~~

**~~R4-10-107.~~ R4-10-203.     Personal License or Registration Renewal**

**~~A.~~** An aesthetician, cosmetologist, hairstylist, nail technician, barber, or instructor licensee or an eyelash technician registrant shall ~~postmark or~~ electronically submit an application for renewal to the Board on or before the licensee's or registrant's birthday every two years.

1. ~~If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.~~

2. A renewal application consists of:

~~a.~~1. A form provided by the Board that contains the licensee's or registrant's name, address, e-mail address, Social Security number, and signature;

~~b.~~ A copy of a government-issued identification containing a photograph of the licensee;

~~e.~~2. If the documentation ~~previously submitted under R4-10-104(A)(3) or R4-10-105(3) at the time of initial licensure or registration~~ did not establish citizenship in the United States or was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the licensee's or registrant's presence in the United States continues to be authorized under federal law;

~~d.~~3. A statement of whether the licensee or registrant has changed the licensee's or registrant's name since the previous application and, if the name has changed, a copy of a legal document, such as a marriage license, ~~or~~ divorce decree, or driver license showing the name change; and

~~e.~~4. The fee required in R4-10-102.

**~~B.~~** An establishment licensee shall ~~annually postmark or electronically submit to the Board an application for renewal on or before the license renewal date.~~

1. ~~If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.~~

2. A renewal application consists of:

a. A form provided by the Board that contains:

i. The establishment's name;

ii. The licensee's license number; and

iii. If the licensee is an individual or partnership, the signature and tax identification number of the licensee ~~or if the licensee is a corporation or limited liability company, the~~

~~signature of the authorized signer and the tax identification number of the corporation or limited liability company; and~~

b. ~~The fee required in R4-10-102.~~

**~~R4-10-110.~~ R4-10-204.      Reactivating an Inactive or Expired License or Registration**

- A. A cosmetology, hairstyling, nail technology, aesthetics, barbering, or instructor license or eyelash technician registration that has been inactive or expired for ~~less~~ fewer than two years may be reactivated by paying the delinquent renewal fee.
- B. A cosmetology, hairstyling, nail technology, aesthetics, barbering, or instructor license or eyelash technician registration that has been inactive or expired for more than two years, but ~~less~~ fewer than ~~10~~ five years, may be reactivated by the inactive or expired licensee or registrant paying the delinquent renewal fee, as described in R4-10-102(A)(3), and paying for and completing the infection protection class and law review class, offered by the Board.
- C. If a cosmetology, hairstyling, nail technology, aesthetics, barbering, or instructor license or eyelash technician registration has been inactive or expired for more than ~~10~~ five years, the inactive or expired licensee or registrant shall pay ~~10~~ five years of delinquent renewal fees and comply with all application requirements in ~~R4-10-104~~ R4-10-202, R4-10-A202, R4-10-B201, or R4-10-B202 as applicable, before practicing or teaching barbering, cosmetology, aesthetics, hairstyling, nail technology, or eyelash technology in Arizona.

**R4-10-205.      Aesthetic School Requirements Renumbered**

- ~~A. The licensee of a school that provides aesthetics 600-hour training for students, 350-hour training for instructors, or both, shall ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to those required under R4-10-203 and R4-10-204:~~
- ~~1. A work station for each student in attendance to perform aesthetics services to the public for a fee, each having:~~
- ~~a. A facial chair or table;~~
  - ~~b. A supported table top;~~
  - ~~e. A dry, disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112, and~~
  - ~~d. A labeled receptacle for contaminated tools and instruments as specified under R4-10-112.~~

2. ~~One steamer machine for each group of four students in attendance during classroom instruction and two students in attendance during clinic instruction;~~
3. ~~One microdermabrasion machine to be used at a non-invasive level;~~
4. ~~One magnifying lamp of at least 5 diopters for each group of two students in attendance during classroom instruction and each group of four students in attendance during clinic instruction;~~
5. ~~Cleansers;~~
6. ~~Massage medium;~~
7. ~~Toner; and~~
8. ~~Exfoliants and masks.~~

**B.** ~~A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled aesthetics student:~~

1. ~~Access to an electronic or standard textbook for professional aestheticians;~~
2. ~~Access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
3. ~~One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and~~
4. ~~One container for contaminated tools and instruments as specified under R4-10-112.~~

**R4-10-206. Cosmetology School Requirements Renumbered**

**A.** ~~The licensee of a school that provides cosmetology 1600-hour training for students, 350-hour training for instructors, or both, shall ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to those specified under R4-10-203 and R4-10-204:~~

1. ~~A work station for each student in attendance to perform cosmetology services to the public for a fee, each having:
 
  - a. ~~A mirror for client services;~~
  - b. ~~A table top or counter;~~
  - c. ~~A client chair;~~
  - d. ~~A dry, disinfected, covered receptacle to store disinfected tools and instruments as specified under R4-10-112; and~~
  - e. ~~A container for contaminated tools and instruments as specified under R4-10-112;~~~~
2. ~~One shampoo basin for each group of 10 students in attendance during classroom or clinic instruction;~~
3. ~~One hand-held hair dryer for each student in attendance during classroom or clinic instruction;~~

4. ~~Two electric clippers in the school;~~
  5. ~~Chemical hair straighteners;~~
  6. ~~One nail technology table for each group of 10 students in attendance during practical instruction;~~
  7. ~~A facial work station for each group of 10 students in attendance and receiving classroom or clinic aesthetics instruction;~~
  8. ~~A receptacle large enough to completely immerse two feet for each group of 10 students in attendance during classroom or clinic nail technology instruction;~~
  9. ~~One electronic nail file for filing and buffing; and~~
  10. ~~Nail products for acrylics, gels, tips, wraps, and polishing.~~
- B.** ~~A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled cosmetology student:~~
1. ~~Access to an electronic or standard textbook for professional cosmetologists;~~
  2. ~~Access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
  3. ~~One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and~~
  4. ~~A container for contaminated tools and instruments as specified under R4-10-112.~~

**R4-10-206.1. Hairstyling School Requirements Renumbered**

- A.** ~~The licensee of a school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under R4-10-206(A)(1) through (6) are provided in addition to those specified under R4-10-203 and R4-10-204.~~
- B.** ~~A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:~~
1. ~~Access to an electronic or standard textbook for professional hairstylists;~~
  2. ~~Access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
  3. ~~One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and~~
  4. ~~A container for contaminated tools and instruments as specified under R4-10-112.~~

**R4-10-207. Nail Technology School Requirements Renumbered**

- ~~A. The licensee of a school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall ensure the following minimum facilities, tools, instruments, equipment, supplies, and materials are provided, in addition to those specified under R4-10-203 and R4-10-204:~~
- ~~1. A work station to perform nail technology services for the public for a fee for each student in attendance containing:
    - ~~a. A nail technology table;~~
    - ~~b. A client chair;~~
    - ~~e. A nail technology chair or stool;~~
    - ~~d. A disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112;~~
    - ~~e. A container with wet disinfectant as specified under R4-10-112;~~
    - ~~f. A container for soiled tools and instruments as specified under R4-10-112;~~
    - ~~g. A waste receptacle as specified under R4-10-112; and~~
    - ~~h. A disinfectant for blood or body fluid exposure as specified under R4-10-112.~~~~
  - ~~2. One container large enough to immerse two feet completely, for every five students in attendance during clinic instruction;~~
  - ~~3. Nail products for acrylics, gels, tips, wraps, and polishing; and~~
  - ~~4. One ultraviolet light.~~
- ~~B. A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled nail technology student:~~
- ~~1. One simulated hand;~~
  - ~~2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;~~
  - ~~3. One covered container to store disinfected tools and instruments as specified under R4-10-112;~~
  - ~~4. A container for soiled tools and instruments as specified under R4-10-112;~~
  - ~~5. Access to an electronic or standard textbook for professional nail technology and access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
  - ~~6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and~~
  - ~~7. One electric nail file.~~

**R4-10-208. Combined School Requirements Renumbered**

~~A: A school licensee shall ensure the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:~~

- ~~1. Aesthetics course - 600 hours;~~
- ~~2. Aesthetics instructor course - 350 hours;~~
- ~~3. Cosmetology course - 1600 hours;~~
- ~~4. Cosmetology instructor course - 350 hours;~~
- ~~5. Hairstyling course - 1000 hours;~~
- ~~6. Hairstyling instructor course - 350 hours;~~
- ~~7. Nail technology course - 600 hours; and~~
- ~~8. Nail technology instructor course - 350 hours.~~

~~B: A school licensee that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required under:~~

- ~~1. R4-10-203;~~
- ~~2. R4-10-204;~~
- ~~3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance;~~
- ~~4. R4-10-206;~~
- ~~5. R4-10-206.1, and~~
- ~~6. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.~~

~~C: A school licensee that provides the curriculum specified in subsections (A)(3) through (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required under:~~

- ~~1. R4-10-203;~~
- ~~2. R4-10-204;~~
- ~~3. R4-10-206;~~
- ~~4. R4-10-206.1, and~~
- ~~5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.~~

~~D: A school licensee that provides the curriculum specified in subsections (A)(1) through (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required under:~~

- ~~1. R4-10-203;~~

2. ~~R4-10-204,~~
  3. ~~R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance;~~
  4. ~~R4-10-206, and~~
  5. ~~R4-10-206.1.~~
- E.** ~~A school licensee that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(7) and (A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required under:~~
1. ~~R4-10-203,~~
  2. ~~R4-10-204,~~
  3. ~~R4-10-205, and~~
  4. ~~R4-10-207.~~

**R4-10-209. Demonstrators; Exclusions Renumbered**

- A.** ~~A school licensee shall ensure only an individual who holds an instructor license or a student instructor is allowed to teach in a school.~~
- B.** ~~A school licensee shall ensure an unlicensed individual who demonstrates a process, product, or appliance to enrolled students presents the demonstration only when a licensed instructor is present and observing the demonstration.~~
- C.** ~~A school licensee shall ensure an unlicensed individual who conducts a demonstration on a model, confines the demonstration to an explanation of the products, procedures, and appliances being promoted.~~

**R4-10-210. Changes Affecting a License to Operate a School Renumbered**

- A.** ~~A licensee shall apply for a new license to operate a school when any of the following occurs:~~
1. ~~The school address changes;~~
  2. ~~The name of the school changes;~~
  3. ~~If the school licensee is a corporation, the controlling ownership is transferred or the corporation is reorganized; or~~
  4. ~~If the school licensee is a corporation, limited liability company, or partnership, a corporate officer, partner, or statutory agent changes.~~

- ~~B. A school licensee and the instructor in charge shall ensure a Board-issued license to operate a school, indicating the correct ownership of the license, is posted in the school before the school is opened for business.~~

## PART A. BARBERING

### ~~R4-10-601. R4-10-A201.~~      **Examinations**

~~A. Required examinations.~~

1. Except for an applicant for licensure by reciprocity or universal recognition, an applicant for:
  - a. ~~A a~~ a barber or instructor license shall pass an examination covering the topics listed in A.R.S. § ~~32-324(C)~~ 32-324(A); and
  - b. ~~An instructor license shall pass the examination described in A.R.S. § 32-324(D);~~
2. As authorized under A.R.S. § 32-322(A)(2) and A.R.S. § 32-323(A)(2), the Board shall ensure that applicants for licensure by reciprocity and universal recognition possess necessary qualifications by requiring:
  - a. All applicants for licensure by reciprocity or universal recognition to pass an examination regarding A.R.S. Title 32, Chapter 3 and this Chapter; and
  - b. Applicants for licensure by reciprocity or universal recognition as an instructor to pass an examination regarding procedures the Board uses to measure the practical skills of barbering students.

~~B. In addition to requirements prescribed under A.R.S. § 32-324, the Board shall make the following provisions for any examination administered by the Board:~~

- ~~1. The Board shall send an applicant written notification of an assigned examination time and location at least seven days before a scheduled examination.~~
2. Examination language provision. The Board shall:
  - a. Administer an examination under this Section in English; and
  - b. Allow an applicant for a barber license to provide a reader or personal foreign language interpreter who shall not be:
    - i. A currently or previously licensed barber or cosmetologist;
    - ii. A barber or cosmetology instructor, or
    - iii. A barber or cosmetology student in any state or foreign country.
3. Examination integrity provision. The Board shall not:
  - a. Disclose examination questions; or

- b. ~~Return a completed examination or other examination records kept by the Board to a school or applicant.~~
- 4. ~~The Board shall dismiss an applicant from an examination under penalty of examination fee forfeiture if the applicant:~~
  - a. ~~Cheats, or~~
  - b. ~~Solicits any information from another person except the examiner.~~
- 5. ~~The Board shall require re-examination if an applicant fails to apply for a license within one year after passing an examination.~~
- 6. ~~For purposes of an examination's practical portion, an applicant for a barber license shall supply:~~
  - a. ~~All necessary barbering implements and supplies; and~~
  - b. ~~A live model who shall not be:~~
    - i. ~~A currently or previously licensed barber or cosmetologist;~~
    - ii. ~~A barber or cosmetology instructor; or~~
    - iii. ~~A barber or cosmetology student in any state or foreign country.~~
- 7. ~~If an applicant fails a portion of an examination, the Board shall allow the applicant to meet with Board staff and participate in a general discussion of the failed portion of the examination if the applicant submits a written request to the Board within 30 days after the examination.~~

**R4-10-603;R4-10-A202.    Application for a Barber Instructor License Application by Examination**

- A. An applicant for licensure by examination as an instructor shall attach the following to the application form required under ~~subsections~~ subsection (B) and (C):
  - 1. Proof ~~that~~ the applicant is at least 19 years old;
  - 2. Proof ~~that~~ the applicant has a high school diploma or its equivalent;
  - 3. Proof ~~that~~ the applicant has practiced barbering for at least ~~two years~~ one year. The proof shall contain the notarized signature of the barber or barbers where the work was performed;
  - 4. Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;
  - 5. A photograph of the applicant that is passport style and suitable for use on an identification card ~~and:~~
    - a. ~~Of the applicant only;~~
    - b. ~~U.S. passport sized; and~~
    - e. ~~Signed by the applicant across the front without blocking the face;~~

~~6. If currently licensed as a barber instructor in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and~~

~~7.6. The applicable fee specified in R4-10-502(A)(2) R4-10-102. Unless exempt under A.R.S. § 32-323(C), the applicant shall also pay the examination fee as directed under R4-10-102.~~

**B. License by examination.** ~~In addition to the requirements under subsection (A), an An~~ applicant for licensure as an instructor by examination shall submit an application form, which is available ~~from the Board~~ on the Board's website, and provide the following information:

1. Full name;
2. Other names, if any, by which the applicant has been known;
3. Full mailing and physical addresses and e-mail address;
4. Telephone number;
5. Social Security number;
6. Birth date;
7. Current Arizona barber license number;
8. If the applicant attended an Arizona school for training as a barber instructor: a copy of the certificate of graduation required under R4-10-305(E).
  - ~~a. Name and address of barbering school attended for instructor training;~~
  - ~~b. Total hours of instructor training; and~~
  - ~~e. Dates during which instructor training was obtained;~~
9. A statement regarding whether the applicant:
  - a. Has ever been licensed as a barber instructor in Arizona and if so, when;
  - b. Has ever been a licensed barber instructor in any other country or state and if so, the country or state and dates of licensure as a barber instructor; and
  - c. Has had a former instructor license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;
10. Any other information required by the Board; and
11. The applicant's ~~notarized signature verifying that~~ and verification that the information provided is true and correct and complete.

**C. License by reciprocity.** ~~In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (11), an applicant for an instructor license by reciprocity shall submit the following:~~

- ~~1. A copy of the current license to instruct barber students issued by a state that has a reciprocity agreement with Arizona; and~~

2. ~~Documentation of at least one year's experience as a licensed instructor of barber students. The documentation shall contain the notarized signature of the owner of the barber school at which instruction was provided.~~

## **PART B. COSMETOLOGY**

### **R4-10-B201. Application for an Instructor License by Examination**

- A. An applicant for instructor license by examination shall submit to the Board:**
1. The fee required for an initial personal license in R4-10-102;
  2. A passport-style photo of the applicant; and
  3. An application form available on the Board's website that contains:
    - a. The applicant's name, full mailing and physical addresses, e-mail address, telephone number, Social Security number, and birth date;
    - b. The name and address of each licensed school attended by the applicant;
    - c. The name of course completed, the name of the school where completed, and the starting date and date of graduation;
    - d. If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
    - e. A statement of whether the applicant has ever had an instructor license suspended or revoked in any state of the United States or foreign country; and
    - f. The applicant's signature verifying the information provided is true and correct; and
  4. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.
- B. In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:**
1. Comply with A.R.S. § 32-531 by submitting the following:
    - a. Documentation, as specified in subsection (B)(3), of required work experience;
    - b. Proof of current licensure in the discipline in which work experience was gained;
    - c. Proof of licensure during the period work experience was gained; and
    - d. Proof of being at least 18 years old; or
    - e. Proof of graduation from high school or its equivalent.
  2. Comply with A.R.S. § 32-531(3) by submitting a copy of one of the following documents:

- a. If the applicant graduated from a course presented by a school licensed by the Board, a copy of the certificate of graduation required under R4-10-305(E);
  - b. If the applicant attended more than one school in Arizona, a copy of a certificate of hours from each school attended, as required under R4-10-305(E);
  - c. If the applicant completed an apprenticeship program as described under A.R.S. §§ 32-510(A)(2)(c), 32-511(A)(3)(c), 32-512(A)(3)(c), or 32-512.01(A)(3)(c), a notice of completion from the Department of Economic Security;
  - d. If the applicant graduated from a course presented by a school in another state or country, evidence the school's requirements at the time the applicant graduated were substantially the same as those required by the Board; and
3. Submit documentation of the work experience required by A.R.S. § 32-531, which shall be signed by an owner or manager of an establishment, an individual, or a supplier of cosmetology products with knowledge based on actual observation of the applicant's licensed experience in the discipline for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
- a. Discipline in which applicant gained the experience;
  - b. Starting and ending dates of applicant's experience in the discipline;
  - c. Name of licensed establishment and address where applicant gained experience in the discipline; and
  - d. License number and name of the licensed individual completing the form; or
  - e. Name, address, and telephone number of the individual providing the information.

**R4-10-B202. Application for an Eyelash Technician Registration**

An applicant for an eyelash technician registration shall submit to the Board:

- 1. The fee for an initial personal registration required in R4-10-102;
- 2. A passport-style photo of the applicant;
- 3. An application, on a form available on the Board's website, that provides:
  - a. The applicant's name, full mailing and physical addresses, e-mail address, telephone number, Social Security number, and birth date;
  - b. One of the following:
    - i. If the applicant was licensed by the Board as a cosmetologist or aesthetician before the effective date of this Section, the license number; or

- ii. A copy of the provisional registration required under A.R.S. § 32-519(A)(3) verifying successful completion of a Board-approved eyelash technician training program;
- c. A statement of whether the applicant has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license suspended or revoked in any state of the United States or foreign country; and
- d. The applicant's signature verifying the information provided is true and correct;
- 4. Documentation of two years of high school or its equivalent as defined at R4-10-101; and
- 5. Documentation specified under A.R.S. § 41-1080 indicating the applicant's presence in the United States is authorized under federal law.

**ARTICLE 2: ARTICLE 3. SCHOOLS; eyelash TECHNOLOGY TRAINING PROGRAM**

**~~R4-10-210. R4-10-301. Changes Affecting a License to Operate a School~~**

- A.** A license to operate a school is not transferrable.
- ~~A.B.~~** A ~~To continue to operate a school, a school~~ licensee shall apply for a new license ~~to operate a school and pay the fee specified under R4-10-102~~ when ~~any of the following occurs~~:
  - 1. The ~~school~~ physical address of the school changes;
  - 2. The name of the school changes; ~~or~~
  - 3. ~~If the school licensee is a corporation, the controlling ownership is transferred or the corporation is reorganized; or~~ There is a change of ownership of the school.
  - 4. ~~If the school licensee is a corporation, limited liability company, or partnership, a corporate officer, partner, or statutory agent changes.~~
- C.** The school licensee shall submit the application and fee required under subsection (B) within 10 days after a change specified under subsection (B) occurs.
- ~~B.D.~~** A ~~The school licensee and the instructor in charge~~ shall ensure a Board-issued license to operate a ~~the~~ school, indicating the correct name, physical location, and ownership of the ~~license~~ school, is posted in the school before the school is opened for business.

**~~R4-10-201. R4-10-302. Application for a License to Operate a Barber, Cosmetology, Aesthetician, Hairstyling, or Nail Technology School; Renewal~~**

- A. An applicant for a license to operate a barber, cosmetology, aesthetician, hairstyling, or nail technology school shall submit ~~the documents required in A.R.S. § 32-551 and:~~
1. An application, on a form ~~provided by the Board~~ available on the Board's website, which is signed by the applicant and provides the following information:
    - a. The applicant's name, ~~address~~ full mailing, physical, and e-mail addresses, ~~e-mail address~~, federal tax identification number, and telephone number;
    - b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
    - c. If the applicant is a corporation, the state of incorporation and name, title, and address of at least two officers of the corporation and the statutory agent;
    - d. If the applicant is a limited liability company, name and address of each member, manager, and statutory agent;
    - e. If the applicant is an Arizona school district or community college:
      - i. Office address of the school district or community college, and
      - ii. Number of the school district and name of the superintendent, or
      - iii. Name of the community college dean;
    - f. ~~The name under which the school will be operated as registered with the Arizona Secretary of State;~~ Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of all individuals owning at least 10 percent of the applicant is authorized under federal law;
    - g. The name and Board-issued license number of the instructor in charge of the school;
    - h. If ~~an existing school~~ a change of ownership, the date the applicant will be assuming ownership;
    - i. If a change of location, both the old and new physical addresses of the school;
    - ~~i-j.~~ If a new school, the scheduled date for opening the school; and
    - ~~j-k.~~ A statement by the applicant verifying the ~~truthfulness of the~~ information provided ~~by the applicant~~ is true and correct;
  2. ~~The following evidence of business organization, as applicable:~~
    - a: ~~Copy of the partnership agreement for a partnership;~~
    - b: ~~Copy of the articles of incorporation and a~~ Δ ~~Certificate of Good Standing from the Arizona Corporation Commission for a corporation, if applicable. or~~
    - e: ~~Copy of the articles of organization for a limited liability company.~~
  3. A signed statement that the ~~establishment~~ school has the equipment required by statute and rule ~~for a school~~;

4. An unexecuted student-school contract form, as required under ~~A.R.S. § 32-558~~ R4-10-305;
  5. An operating schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;
  6. A proposed schedule of courses to be taught at the school;
  7. The name, address, e-mail address, and telephone number of a bonding company, as required under A.R.S. § 32-325(C) or 32-551, as applicable, and a copy of the bond;
  8. A copy of all school policies and procedures;
  9. A school catalog that contains the information required under A.R.S. § 32-559 and:
    - a. The number of days during course enrollment necessary to complete the course hours;
    - b. The days and hours of operation, vacation periods, and holidays;
    - c. Policies regarding leaves of absence, refunds, and vacation approval for students;
  - ~~10. Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and~~
  - ~~11.10.~~ The fee required in R4-10-102.
- B.** ~~In addition to the requirements in R4-10-107, when renewing a license, a licensee shall submit:~~ Demonstrate compliance with A.R.S. Title 32, Chapter 3 or 5, as applicable, and this Chapter through a school inspection conducted by the Board. The Board shall schedule the inspection only after the applicant has submitted a complete application. The applicant shall not open a school until the inspection is completed and the Board determines the school complies with all requirements.
- ~~1. A statement that indicates:~~
    - ~~a. Any modifications, additions, or deletions to the previously submitted catalog;~~
    - ~~b. Any changes that have occurred regarding the school's accrediting or approving organization; and~~
    - ~~e. The school continues to maintain all equipment required by statute and rule;~~
  - ~~2. A subject description for each new course, if applicable;~~
  - ~~3. The name, address, and e-mail address of a new statutory agent if the statutory agent will change beginning with the new license year;~~
  - ~~4. The name and license number of the instructor in charge of the school; and~~
  - ~~5. The name, address, e-mail address, and telephone number of the bonding company, the bond number, expiration date of the bond, and a copy of the bond.~~
- C.** ~~The school licensee shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;~~

- ~~D. Within five days after a change occurs during the license year, the school licensee shall submit to the Board a subject description of any new course; the name of any new statutory agent; a description of a change to the catalog or school policies, procedures, or hours of operation, a copy of the student-school contract, or a copy of the bond.~~

**R4-10-303. Application to Renew a License to Operate a School**

A school licensee shall annually submit to the Board an electronic application for renewal on or before the license renewal date.

1. A renewal application consists of:
  - a. A form provided by the Board that contains:
    - i. The school's name;
    - ii. The licensee's license number; and
    - iii. If the licensee is an individual or partnership, the signature and tax identification number of the licensee or if the licensee is a corporation or limited liability company, the signature of the authorized signer and the tax identification number of the corporation or limited liability company;
2. A statement that indicates:
  - a. Any modifications, additions, or deletions to the previously submitted catalog;
  - b. Any changes that have occurred regarding the school's accrediting or approving organization; and
  - c. The school continues to maintain all equipment required by statute and rule;
3. A subject description for each new course, if applicable;
4. The name, full mailing and physical addresses, and e-mail address of a new statutory agent if the statutory agent will change beginning with the new license year;
5. The name and license number of the instructor in charge of the school;
6. The name, full mailing address, e-mail address, and telephone number of the bonding company, the bond number, expiration date of the bond, and a copy of the bond required under A.R.S. § 32-325 or 32-551;
7. If the documentation submitted at the time of initial licensure was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the school licensee's presence in the United States continues to be authorized under federal law; and
8. The fee required in R4-10-102.

**~~R4-10-802~~: R4-10-304. Notification of Changes**

~~A.~~ A. ~~The holder of a license to operate a~~ A school licensee shall send written notice and updated information to the Board within ~~15~~ 10 days if the ~~license holder~~ school licensee:

1. ~~Amends the school catalog~~ or school policies,
2. ~~Stops offering a course~~ or offers a new course,
3. ~~Offers a new course~~ Appoints a new statutory agent,
4. ~~Changes the number of instructional hours devoted to a course listed under R4-10-801(D),~~
5. ~~Changes the hours during which instruction is provided,~~
6. ~~Changes the school name,~~
7. ~~Changes the school supervisor,~~
7. Enters a new contract regarding management of the school, or
8. ~~Establishes an offsite training facility in a shop under the provisions of R4-10-811 an~~ establishment.

**B.** A change listed under R4-10-301 requires the school licensee to apply for a new license.

**~~R4-10-202~~: R4-10-304. 1 School Closure**

~~A.~~ A. ~~For purposes of A.R.S. § 32-563, the~~ The Board ~~may~~ shall consider a school to be closed if the school licensee fails for five consecutive school days to ensure instruction is provided in accordance with the schedule of operations on file with the Board.

1. The school licensee shall notify all enrolled students and employees in writing of a pending closure at least five calendar days before closure of the school, unless the time of closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time ~~the notice~~ the notice is delivered to students and employees.
2. The licensee of a closed school shall release students' and employees' personal belongings, including equipment, tools, and instruments ~~immediately when requested~~ at the time of closure.
3. The licensee of a closed school shall provide students with written information regarding how to make a claim against the bond required under A.R.S. § 32-325(C)(6) or 32-551(A)(2), as applicable.
- 3.4. ~~As required under A.R.S. § 32-563, the~~ The licensee of a closed school shall electronically deliver or otherwise send the following student records to the Board within 10 ~~calendar~~ business days after the school closes:

- a. ~~As specified in R4-10-204, copies~~ Copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school closed;
  - b. ~~As specified in R4-10-204, a~~ A copy of the file of each student who was enrolled the last school day before closure. If a teach-out was arranged with another school, the licensee of the closed school shall transfer the student's file to that school; and
  - c. A written statement signed by each enrolled student verifying the school licensee's compliance with ~~subsection (A)(1) as it applies~~ all provisions of this Section that apply to students.
- B.** The Board shall consider failure to comply with subsection (A) as possible grounds for refusal to issue a school license to an owner, ~~manager, director, or instructor~~ of the licensee of the school at the time of closure.

**~~R4-10-204. R4-10-305. School Records; Student Certificates~~**

- A.** A school licensee shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.
- B.** A school licensee shall ensure that when a student withdraws or transfers from one school to another ~~or withdraws~~, the school from which the student is transferring or withdrawing:
- 1. Keeps a copy of the student's transcript,
  - 2. Forwards one copy of the student's certificate of hours, required under subsection (E), to the student and another copy to the Board within three days of the date of transfer or withdrawal, and
  - 3. Removes the student from the school records and monthly report submitted to the Board in the month following the transfer or withdrawal.
- C.** A school licensee shall ensure the following are maintained:
- 1. A complete and accurate record of the time devoted by each student to the enrolled course of study, including hours devoted to alternative learning and field trips;
  - 2. A complete and accurate record that shows the basis for certification of the student hours. A school licensee shall certify only hours of training the student receives at the licensee's school or transfer hours the school licensee accepts ~~as received in~~ from another licensed school in Arizona or another state or country;
  - 3. A complete and accurate individual student file for each student enrolled containing:
    - a. Executed student-school contract;

- b. Financial aid transcript;
  - c. Proof of ~~10th grade equivalency~~ being at least 16 years old and two years of high school or its equivalent for a student enrolled in an aesthetics, cosmetology, hairstyling, ~~or~~ nail technology, or barbering course or proof of high school equivalency diploma or its equivalent or 18 years of age for a student enrolled in an aesthetics, cosmetology, hairstyling, or nail technology instructor course or 19 years of age for a student enrolled in a barbering instructor course;
  - d. Proof of ~~one year of~~ licensed work experience for a student instructor;
    - i. Under A.R.S. § 32-531, one year for aesthetics, cosmetology, hairstyling, or nail technology; and
    - ii. Under A.R.S. § 32-323, two years for barbering;
  - e. A statement signed by a school administrator and the student that provides a list of the supplies contained in the training kit provided to the student ~~and the following information:~~
    - i. ~~When the training kit will be distributed to the student;~~
    - ii. ~~The retail value of the training kit; and~~
    - iii. ~~A statement that substitutions made after the statement is signed, will be of comparable value; and~~
  - f. A record of ~~completed transfer and crossover hours, if applicable, including proof of~~ cosmetology, hairstyling, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school licensee; and
4. Complete and accurate academic transcripts and attendance and hour records or time cards.
- D.** A school licensee shall ~~electronically deliver to the Board~~ keep a complete and accurate monthly report, containing the following information, ~~no later than the 10th day of each month:~~
- 1. Only for each student enrolled since the prior monthly report:
    - a. Name;
    - b. Enrollment date;
    - c. ~~Address~~ Mailing, physical, and e-mail addresses ~~and e-mail address;~~
    - d. Telephone number;
    - e. Type of educational documentation that meets the requirements of R4-10-104;
    - ~~f.e.~~ Proof of Transfer hours ~~received from another school for which the Board issued a license to operate or a school in another state or country and certified by the school licensee~~ accepted, if applicable;
    - ~~g.f.~~ Acceptance of crossover Crossover hours accepted, if applicable; and
    - ~~h.g.~~ Birth date.

2. The ~~enrollment category of~~ discipline in which each student is enrolled;
3. The name, and license number, ~~and work schedule~~ of the instructor in charge of the school and name of the custodian of records;
4. The name, and license number, ~~and work schedule~~ of each instructor employed by the school licensee;
5. The signature of the instructor who prepares and certifies the report is correct;
6. The name, scheduled attendance, and Board-issued license number for each student instructor;
7. For each demonstration given, the name of the demonstrator, name of the observing instructor, name of the process or product demonstrated, number of students in attendance, and name of the course in which the demonstration was given;
8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school licensee shall not amend total hours without satisfactory proof of error;
- ~~9. Signature of each student verifying approval of the certified hours;~~
- ~~10.9.~~ The school licensee's certification of the students who meet graduation requirements, including the day, month, and year of graduation; and
- ~~11.10.~~ The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued.

**E. A school licensee shall provide the following certificates to each student:**

1. Certificate of graduation. When a student successfully completes the course of study offered by the school licensee, the school licensee shall provide the student with a certificate of graduation that includes the following information:
  - a. Name of the school;
  - b. License number of the school licensee;
  - c. Name of the graduating student;
  - d. Discipline in which the student completed the course of study;
  - e. Hours of study completed at the school;
  - f. Transfer hours accepted by the school licensee;
  - g. Crossover hours accepted by the school licensee;
  - h. Grand total of the hours under subsections (E)(1)(e) through (g);
  - i. The dates on which the student started and ended the course of study at the school; and
  - j. Dated signature of the school licensee or authorized representative.

2. Certificate of hours. When a student withdraws or transfers from one school to another, the school licensee shall provide the student with a certificate of hours that includes the following information:

- a. Name of the school;
- b. License number of the school licensee;
- c. Name of the withdrawing or transferring student;
- d. Discipline in which the student was enrolled;
- e. Hours of study completed at the school;
- f. The date on which the student started the course of study at the school and the date on which the student withdrew or transferred; and
- g. Dated signature of the school licensee or authorized representative.

**E.F.** A school licensee shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the required examination, and stays in school until the date of the examination.

**F.G.** A school licensee is not required to maintain a student file for licensed individuals.

**~~R4-10-203.~~ R4-10-306. General Barber, Cosmetology, Aesthetics, Hairstyling, or Nail Technology School Requirements**

A. The licensee of ~~an~~ a barber, aesthetics, cosmetology, hairstyling, or nail technology school shall ensure the school complies with R4-10-112 and has the following minimum facilities, equipment, supplies, and materials:

- 1. ~~One~~ An area of instruction for ~~every 20~~ students;
- 2. ~~A licensed instructor as manager or director;~~
- 3. ~~2. A desk or table and chair, or other instructional~~ Sufficient instructional fixtures and facilities for ~~each student during theory instruction~~ instructor and student use;
- 4. ~~3.~~ A board on which to write or post materials during instruction;
- 5. ~~4.~~ A secured area for personal items of students and instructors;
- 6. ~~5.~~ A sink area for ~~each~~ every 50 students in attendance for ~~the preparation~~ preparing, mixing, and dispensing of supplies and chemicals, and for ~~the disinfection of~~ disinfecting small tools or instruments;
- 7. ~~6.~~ At least one restroom that meets the requirements of R4-10-112; and
- 8. ~~7.~~ Separate receptacles for garbage and soiled linens .

- B.** The school licensee shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except each student may be required to furnish small tools or instruments. The school licensee shall ensure all equipment, tools, and materials are ~~salon~~ establishment quality and maintained in good repair at all times.
- C.** The school licensee shall ensure students have access to the following materials whether in a school library or electronically:
1. Standard dictionary;
  2. Medical dictionary;
  3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
  4. ~~Three current periodicals on the art and science of cosmetology;~~
  5. ~~4.~~ Current aesthetics, barbering, cosmetology, hairstyling, or nail technology instruction manuals or textbooks, as applicable to the disciplines taught at the school; and
  6. ~~5.~~ Current Arizona Board of Cosmetology statutes and rules; ~~and~~
  7. ~~A cosmetology dictionary.~~
- D.** The school licensee may allow a student to satisfy theory curriculum requirements by participating in virtual learning.
- ~~**E.**~~ The school licensee shall maintain at the school a complete file on all current curriculum requirements.
- ~~**E.**~~ The school licensee shall not pay an enrolled student for time while the student is taking courses or receiving credit. Under A.R.S. § 32-557(C), an employee who is enrolled in a school for the purpose of becoming an instructor may be paid for work done as an employee.
- ~~**F.**~~ The school licensee may offer a postgraduate or advanced continuing education barber, aesthetics, cosmetology, hairstyling, or nail technology course to currently licensed individuals without a licensed instructor present and to students currently enrolled in the school with a licensed instructor present. The school licensee shall not report postgraduate credit hours to the Board or apply the hours toward graduation.
- ~~**G.**~~ The school licensee shall not allow enrolled students to perform services on a person without a licensed instructor present.
- ~~**H.**~~ A school licensee may enroll an individual licensed by the Board in the school for a refresher course as a current student ~~and shall submit to the Board a record of hours received in the refresher course.~~

~~I.J.~~ A school licensee shall establish a periodic grading schedule and ensure student transcripts are kept current.

~~K.~~ A school licensee shall ensure each student is evaluated for progress and suggestions are provided to the student for remediating deficiencies.

~~J.L.~~ A school licensee shall schedule a minimum of four hours of theory courses each week for each full-time student and a minimum of two hours of theory courses each week for each part-time student.

~~K.M.~~ A school licensee shall ensure safety and infection control measures relating to each subject are taught in conjunction with that subject.

~~L.N.~~ A school licensee shall not solicit students for enrollment at other school sites.

~~M.O.~~ A school licensee shall ensure that while teaching, instructors wear a tag indicating the instructor's name and ~~courses~~ disciplines taught.

~~N.P.~~ A school licensee shall ensure compliance with the following:

1. A student does not attend school more than 56 hours in any one week;
2. A student operates only safe equipment in good repair;
3. A student of barbering, aesthetics, cosmetology, hairstyling, or nail technology performs services within the enrolled course, on the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the ~~basic training~~ specified hours applicable to the student: in R4-10-303, R4-10-304, R4-10-304.1, or R4-10-305.
  - a. 120 hours of aesthetics training;
  - b. 300 hours of barbering, cosmetology, or hairstyling training; or
  - c. 80 hours of nail technology training;
4. The school licensee does not receive remuneration for clinical services a student performs for the public until the student has completed the applicable hours specified in subsection (P)(3);
- ~~4.5.~~ A student is not prevented or discouraged from making a complaint to the Board;
- ~~5-6.~~ A student is not dismissed from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
- ~~6.7.~~ While in school, each student wears a tag indicating the student's name and the course in which the student is enrolled; and
7. ~~If the school has a distant classroom, the equipment in the distant classroom is the same as that required under this Section; and:~~
  - a. ~~Private postsecondary and public educational facilities do not extend beyond Arizona boundaries;~~

- b. ~~A photocopy of the Board-issued license to operate a school or Board-issued, wallet-size license card to operate a school shall be posted in each distant facility;~~
- e. ~~Duplicate instructor licenses are not required in a distant classroom; and~~
- d. ~~No clinic or public services are allowed in a distant classroom.~~

**Q.** The school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled student:

1. One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and
2. One container for contaminated tools and instruments as specified under R4-10-112.

**~~R4-10-302.~~ R4-10-307. Instructor 350-hour Curriculum Required Hours Requirements**

**A.** A school licensee shall ensure each student in ~~an~~ a barber, aesthetics, cosmetology, hairstyling, or nail technology instructor course completes 350 curriculum hours that include the following:

1. Orientation and review of ~~the Arizona Board of Cosmetology~~ statutes and rules;
2. Theory, preparation, and practice curriculum development. This includes:
  - a. Developing and using educational aids;
  - b. Practical and written presentation principles;
  - c. Classroom management evaluation, assessment, and remediation methods;
  - d. Diversity in learning including cultural differences;
  - e. Methods of teaching;
  - f. Professional development including ethics; and
  - g. Alternative learning;
3. Classroom and clinic oversight.

**B.** A school licensee may allow a student in an instructor course to satisfy, in part, curriculum hours required under subsection (A)(2) by completing a course at an accredited college or university or an educational institution described under ~~R4-10-101(15)(c)~~ R4-10-101(24)(c) and (d). Hours obtained under this subsection are subject to the following limits:

1. No more than nine credit hours for barbering, cosmetology, hairstyling, nail technology, or aesthetics;
2. ~~No more than six credit hours for nail technology;~~ and
3. ~~2.~~ Each credit hour equals no more than 30 of the ~~clock~~ curriculum hours required under subsection (A).

- C. A school licensee may allow a student in an instructor course to satisfy the curriculum hours required under subsection (A)(2) by participating in virtual learning.
- D. A school licensee shall ensure all instruction given by a student instructor is under the direct supervision and observation of a licensed instructor.
- E. A school licensee shall not allow a student instructor to instruct students or check student services performed on the public until the student instructor has received at least 80 hours of instructor training.
- E. Under A.R.S. § 32-557, a student enrolled in a school for the purpose of becoming an instructor may be a paid employee of the school.

**~~R4-10-208.~~ R4-10-308. Combined School Requirements**

- A. A school licensee shall ensure the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
  1. Aesthetics course - 600 hours,
  2. Aesthetics instructor course - 350 hours,
  3. Cosmetology course – ~~4600~~ 1500 hours,
  4. Cosmetology instructor course - 350 hours,
  5. Hairstyling course – 1000 hours,
  6. Hairstyling instructor course – 350 hours,
  7. Nail technology course - 600 hours, ~~and~~
  8. Nail technology instructor course - 350 hours,
  9. Barbering course – 1200 hours, and
  10. Barbering instructor course – 350 hours.
- B. A school licensee that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required under:
  1. ~~R4-10-203~~ R4-10-305,
  2. ~~R4-10-204~~ R4-10-306,
  3. ~~R4-10-205~~ R4-10-B301 except subsection (A)(1) is one ~~work-station~~ workstation for each two aesthetics students in attendance,
  4. ~~R4-10-206~~ R4-10-B302,
  5. ~~R4-10-206.1~~ R4-10-B303, and

6. ~~R4-10-207~~ R4-10-B304 except subsection (A)(1) is one ~~work-station~~ workstation for each two nail technology students in attendance.
- C. A school licensee that provides the curriculum specified in subsections (A)(3) through (A)(8) only shall have the minimum records, facilities, equipment, supplies, and materials required under:
1. ~~R4-10-203~~ R4-10-305,
  2. ~~R4-10-204~~ R4-10-306,
  3. ~~R4-10-206~~ R4-10-B302,
  4. ~~R4-10-206.†~~ R4-10-B303, and
  5. ~~R4-10-207~~ R4-10-B304 except subsection (A)(1) is one ~~work-station~~ workstation for each two nail technology students in attendance.
- D. A school licensee that provides the curriculum specified in subsections (A)(1) through (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required under:
1. ~~R4-10-203~~ R4-10-305,
  2. ~~R4-10-204~~ R4-10-306,
  3. ~~R4-10-205~~ R4-10-B301 except subsection (A)(1) is one ~~work-station~~ workstation for each two aesthetics students in attendance,
  4. ~~R4-10-206~~ R4-10-B302, and
  5. ~~R4-10-206.†~~ R4-10-B303.
- E. A school licensee that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(7) and (A)(8) only shall have the minimum records, facilities, equipment, supplies, and material required under:
1. ~~R4-10-203~~ R4-10-305,
  2. ~~R4-10-204~~ R4-10-306,
  3. ~~R4-10-205~~ R4-10-B301, and
  4. ~~R4-10-207~~ R4-10-B304.
- F. A school licensee that provides the curriculum specified in subsections (A)(9) and (A)(10) only shall have the minimum records, facilities, equipment, supplies, and material required under:
1. R4-10-305,
  2. R4-10-306,

**~~R4-10-306.~~ R4-10-309.      Curricula Hours**

- A.** A school licensee shall ensure hours of training received in ~~an~~ a barbering, aesthetics, cosmetology, hairstyling, or nail technology course are not applied toward hours required to obtain an instructor's license.
- B.** A school licensee shall ensure hours of training received in an instructor course are not applied toward hours required to obtain ~~an~~ a barber, aesthetician, cosmetologist, hairstylist, or nail technician license. Hours received in an instructor course may apply toward hours required to reactivate ~~an~~ a barber, aesthetics, cosmetology, hairstyling, or nail technology license if the instructor hours are received after inactive status occurs.
- ~~**C.** When evaluating an application for licensure, the Board shall accept crossover hours. The Board shall accept an hour of training as a crossover hour only once.~~
- ~~**D.C.**~~ A school licensee shall ensure that when a student completes a course of instruction, the cumulative hours for the student equal, at a minimum, those specified in this Article, as applicable.
- ~~**E.D.**~~ A school licensee shall ensure that infection control, disinfection procedures, and safety issues are taught with every subject and every procedure.
- ~~**F.E.**~~ Alternative learning hours are hours a school licensee may authorize to enable a student to pursue knowledge of barbering, cosmetology, aesthetics, hairstyling, or nail technology in an alternative format or at a location other than ~~a salon~~ an establishment. A school licensee shall ensure a student is not credited with more than 20 percent of the total hours required for graduation as alternative learning hours. The school licensee shall ensure the record of alternative learning hours required under ~~R4-10-204(C)~~ R4-10-305(C) is maintained.
- ~~**G.F.**~~ A school licensee that authorizes alternative learning hours under subsection ~~(F)~~ (E) shall include details of the alternative learning format or location in the school policies and procedures in the school catalog.
- ~~**H.G.**~~ A school licensee may grant a maximum of 16 hours obtained during field trips toward the hours required for graduation if the field trips are provided by or in the presence of a licensed instructor. The school licensee shall ensure the record of field trip hours required under ~~R4-10-204(C)~~ R4-10-305(C) is maintained.
- ~~**I.H.**~~ If a school is physically closed while alternative learning hours or a field trip is provided, the school licensee shall ensure:
- ~~1. A~~ a notice visible to the public and students is posted; ~~and~~
  - ~~2. A notice is sent to the Board indicating the time and location of the alternative learning hours or field trip.~~

~~J.I.~~ A student instructor may obtain classroom hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:

1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
2. Earns no more than the classroom hours required under ~~R4-10-302~~ R4-10-307.

~~R4-10-209; R4-10-310.~~ **Demonstrators; Exclusions**

- A. A school licensee shall ensure only an individual who holds an instructor license or a student instructor is allowed to teach in a school.
- B. A school licensee shall ensure an unlicensed individual who demonstrates a process, product, or appliance to enrolled students:
1. ~~presents~~ Presents the demonstration only when a licensed instructor is present and observing the demonstration; and
  2. Confines the demonstration to an explanation of the products, procedures, and appliances being promoted.
- ~~C. A school licensee shall ensure an unlicensed individual who conducts a demonstration on a model, confines the demonstration to an explanation of the products, procedures, and appliances being promoted.~~

**PART A. BARBERING**

~~R4-10-805; R4-10-A301.~~ **Barbering School Operations**

- A. ~~The holder of a license to operate a~~ A barbering school licensee shall file the school's operating schedule with the Board ~~before at the first scheduled class begins~~ time of the initial inspection.
- B. ~~The holder of a license to operate a~~ barbering school licensee shall ensure ~~that~~ all equipment provided under this Chapter is ~~of sufficient~~ establishment quality ~~to meet the educational needs of students~~ and maintained in good repair.
- C. Unless a student who is studying barbering possesses the equipment listed under this subsection at the time of enrollment, the ~~holder of a license to operate a~~ barbering school licensee shall provide the student with a non-returnable training kit that includes the following equipment, all of which are new:
1. Course textbooks,
  2. One mannequin for barbering practice,
  3. Twelve combs and four brushes,

4. One hair dryer,
5. One straight razor with interchangeable blades,
6. One pair of haircutting shears with at least six-inch blades,
7. One pair of thinning shears,
8. One clipper with interchangeable blades sizes 1 and .000 or an adjustable clipper,
9. One neck duster, and
10. One copy of the current statutes and rules governing the Board.

~~**D.** Trainee notices. At the time the holder of a license to operate a school enrolls a student, the license holder shall give Exhibit 1 or 2 to the student, as appropriate, and maintain the completed document for the time specified in R4-10-808(H).~~

~~**E.D.** An As provided under R4-10-307(D), a student instructor trainee shall not teach students until the student instructor trainee has received ~~40~~ 80 instructional hours of training in methods of teaching. ~~An instructor trainee shall complete all training in no more than six months.~~~~

~~**F.** An individual who is not an Arizona-licensed instructor shall not teach in a school but may demonstrate any process, product, or appliance to students when the individual is under the supervision of an Arizona-licensed instructor.~~

~~**G.** Within five days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:~~

- ~~1. A copy of the student's written application to attend the school containing the following:
 
  - ~~a. The student's name and address,~~
  - ~~b. The student's enrollment date,~~
  - ~~c. An indication regarding whether the student is enrolled in a barber or instructor course, and~~
  - ~~d. The student's signature, and~~~~
- ~~2. Two photographs of the student that meet the standards specified in R4-10-602(A)(4).~~

~~**H.** Within 90 days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:~~

- ~~1. Proof that the student is at least 16 years old if enrolled in a barber course or at least 19 years old if enrolled in an instructor course;~~
- ~~2. Proof that the student has at least a tenth-grade education if enrolled in a barber course or graduated from high school or its equivalent if enrolled in an instructor course; and~~
- ~~3. Documentation specified under A.R.S. § 41-1080(A) that the student's presence in the U.S. is authorized under federal law.~~

~~I.E.~~ The Board shall use the information provided under subsection (G) to prepare and issue an educational card to a student. The holder of a license to operate a barbering school licensee shall ensure ~~that~~ a student: wears a name tag that includes the student's name and status as a student whenever the student is at the barbering school.

- ~~1. Displays the card at the student workstation, and~~
- ~~2. Returns the card to the Board upon completion of, or withdrawal from, the course.~~

**R4-10-807: R4-10-A302. Barbering School 1200-hour Curriculum Requirements**

~~A.~~ The holder of a license to operate a school shall ensure that the barbering curriculum offered complies with A.R.S. § 32-325(B):

~~B.~~ In addition to complying with the minimum requirements under A.R.S. § 32-325(B)(1), the ~~license holder~~ barbering school licensee shall include instruction in the following:

1. Professional ethics,
2. Shop Establishment management, and
3. Regulatory provisions prescribed under A.R.S. Title 32, Chapter 3, and this Chapter.

**R4-10-811: R4-10-A303. Offsite Training Facility**

~~A.~~ The holder of a license to operate a A barbering school licensee may operate an offsite training facility in a ~~shop~~ an establishment that complies with the provisions of ~~A.R.S. § 32-325(C) Article 4, Part A of this Chapter, and R4-10-804(A)(11), R4-10-805(B), (E), and (F), and R4-10-806(B), (C), (D), (G), and (H)~~ portions of R4-10-306 applicable to the instruction provided at the offsite training facility, R4-10-A302(D), and R4-10-A303(B).

~~B.~~ In addition to subsection (A), a license holder operating an offsite training facility shall comply with the following:

- ~~1. R4-10-804 (A)(1), (3), (6), (7), (8), and (9) if only practical instruction is provided at the facility;~~  
or
- ~~2. Requirements of subsection (B)(1) and R4-10-804 (A)(2) and (A)(5) if classroom instruction is provided at the facility.~~

~~C.B.~~ In addition to the requirements of ~~subsections~~ subsection (A) and (B), a ~~license holder~~ barbering school licensee operating an offsite training facility shall:

1. Clearly indicate to the public the specific portion of the ~~shop~~ establishment designated as an offsite training facility,

2. Post a sign indicating that barbering services at the offsite training facility are provided by students,
3. Require a student to give oral notice of status as a student to each ~~patron client~~, and
4. Restrict student barbering to the portion of the ~~shop establishment~~ designated as an offsite training facility.
5. Ensure a student receives no more than 50 percent of the student's training at the offsite training facility.

## **PART B. COSMETOLOGY**

### **R4-10-205: R4-10-B301. Aesthetic School and 600-hour Curriculum Requirements**

- A. School requirements.** The licensee of a school that provides aesthetics 600-hour training for students, 350-hour training for instructors, or both, shall ensure the following minimum facilities, equipment, supplies, and materials are provided in addition to those required under ~~R4-10-203~~ R4-10-305 and ~~R4-10-204~~ R4-10-306:
1. A ~~work station~~ workstation for each student in attendance to perform aesthetics services ~~to~~ for the public for a fee, each having;
    - a. A facial chair or table;
    - b. A supported table top;
    - c. A dry, disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112, and
    - d. A labeled receptacle for contaminated tools and instruments as specified under R4-10-112.
  2. One steamer machine for each group of four students in attendance during classroom instruction and two students in attendance during clinic instruction;
  3. One microdermabrasion machine to be used at a non-invasive level;
  4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during classroom instruction and each group of four students in attendance during clinic instruction;
  5. Cleansers;
  6. Massage medium;
  7. Toner; and
  8. Exfoliants and masks.
- ~~B. A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled aesthetics student:~~**

1. ~~Access to an electronic or standard textbook for professional aestheticians;~~
2. ~~Access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
3. ~~One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and~~
4. ~~One container for contaminated tools and instruments as specified under R4-10-112.~~

**B.** Curriculum requirements. The licensee shall ensure students in an aesthetics course are provided the following 600-hour curriculum:

1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Board statutes and rules; and
2. Clinical and classroom aesthetics including theory involving all skin types:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the skin;
  - c. Interpersonal skills and professional ethics;
  - d. Clinical and classroom practice that includes face and body;
  - e. Morphology and treatment of skin, including face and body, by hand and machine;
  - f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - g. Aesthetics machines, tools, and instruments and their uses;
  - h. Alternative skin technology;
  - i. Client pre- and post- service consultation, documentation, and analysis;
  - j. Spa body modalities;
  - k. Exfoliation modalities;
  - l. Body and face massage and manipulations;
  - m. Body and facial hair removal except by electrolysis;
  - n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
  - o. Cosmetic enhancement applications; and
  - p. Required industry standards and ecology, including monitor duties.

**R4-10-206, R4-10-B302. Cosmetology School and 1500-hour Curriculum Requirements**

**A.** School requirements. The licensee of a school that provides cosmetology ~~4600-hour~~ 1500-hour training for students, 350-hour training for instructors, or both, shall ensure the following minimum

facilities, equipment, supplies, and materials are provided in addition to those specified under ~~R4-10-203~~ R4-10-305 and ~~R4-10-204~~ R4-10-306:

1. A ~~work station~~ workstation for each student in attendance to perform cosmetology services ~~to~~ for the public for a fee, each having:
    - a. A mirror for client services;
    - b. A table top or counter;
    - c. ~~A client~~ An industry standard chair for the service being provided;
    - d. A dry, disinfected, covered receptacle to store disinfected tools and instruments as specified under R4-10-112; and
    - e. A container for contaminated tools and instruments as specified under R4-10-112;
  2. One shampoo basin for each group of 10 students in attendance during classroom or clinic instruction;
  3. One hand-held hair dryer for each student in attendance during classroom or clinic instruction;
  4. Two electric clippers in the school;
  5. Chemical hair straighteners;
  6. One nail technology table for each group of 10 students in attendance during practical instruction;
  7. A facial ~~work station~~ workstation for each group of 10 students in attendance and receiving classroom or clinic aesthetics instruction;
  8. A receptacle large enough to completely immerse two feet for each group of 10 students in attendance during classroom or clinic nail technology instruction;
  9. One electronic nail file for filing and buffing; and
  10. Nail products for acrylics, gels, tips, wraps, and polishing.
- B.** ~~A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled cosmetology student:~~
1. ~~Access to an electronic or standard textbook for professional cosmetologists;~~
  2. ~~Access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
  3. ~~One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and~~
  4. ~~A container for contaminated tools and instruments as specified under R4-10-112.~~
- B.** Curriculum requirements. The licensee shall ensure students in a cosmetology course are provided the following 1500-hour curriculum:
1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Board statutes and rules; and

2. Clinical and classroom cosmetology including theory that involves nails, hair, and skin:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
  - c. Morphology and treatment of hair, skin, and nails;
  - d. Interpersonal skills and professional ethics;
  - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - f. Cosmetology machines, tools, and instruments and their uses;
  - g. Chemical texturizing;
  - h. Changing existing hair color;
  - i. Hair and scalp care;
  - j. Fundamentals of hairstyling including braiding and extensions;
  - k. Body, scalp, and facial massage and manipulations;
  - l. Hair cutting fundamentals;
  - m. Fundamental aesthetics of the body and face;
  - n. Fundamentals of nail technology;
  - o. Clinical and classroom practice that includes hair, skin, and nails;
  - p. Alternative hair, skin, and nail technology;
  - q. Client pre- and post- service consultation, documentation, and analysis;
  - r. Body and facial hair removal except by electrolysis;
  - s. Cosmetology technology; and
  - t. Required industry standards and ecology, including monitor duties.

**~~R4-10-206.1. R4-10-B303~~ . Hairstyling School and 1000-hour Curriculum Requirements**

- A. School requirements. The licensee of a school that provides hairstyling 1000-hour training for students, 350-hour training for instructors, or both, shall ensure the minimum facilities, equipment, supplies, and materials listed under ~~R4-10-206(A)(1)~~ R4-10-B302(A)(1) through ~~(6)~~ (A)(5) are provided in addition to those specified under ~~R4-10-203~~ R4-10-305 and ~~R4-10-204~~ R4-10-306.
- ~~B. A school licensee shall ensure a nonreturnable student training kit, containing at least the following, is provided to each enrolled hairstyling student:~~
  - ~~1. Access to an electronic or standard textbook for professional hairstylists;~~
  - ~~2. Access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~

3. ~~One disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112; and~~
4. ~~A container for contaminated tools and instruments as specified under R4-10-112.~~

**B. Curriculum requirements.** The licensee shall ensure students in a hairstyling course are provided the following 1000-hour curriculum:

1. Theory of hairstyling, infection control, anatomy, diseases and disorders, and Board statutes and rules; and
2. Clinical and classroom instruction in hairstyling including theory that involves hair:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the hair and scalp;
  - c. Morphology and treatment of hair;
  - d. Interpersonal skills and professional ethics;
  - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - f. Hairstyling machines, tools, and instruments and their uses;
  - g. Chemical texturizing;
  - h. Changing existing hair color;
  - i. Hair and scalp care;
  - j. Fundamentals of hairstyling including braiding and extensions;
  - k. Neck and scalp massage and manipulations;
  - l. Hair cutting fundamentals;
  - m. Clinical and classroom practice that includes hair;
  - n. Alternative hair technology;
  - o. Client pre- and post-service consultation, documentation, and analysis;
  - p. Hairstyling technology;
  - q. Facial hair removal except by electrolysis; and
  - r. Required industry standards and ecology, including monitor duties.

**~~R4-10-207:~~ R4-10-B304. **Nail Technology School and 600-hour Curriculum Requirements****

- A. School requirements. The licensee of a school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall ensure the following minimum facilities, tools, instruments, equipment, supplies, and materials are provided, in addition to those specified under ~~R4-10-203~~ R4-10-305 and ~~R4-10-204~~ R4-10-306:

1. A ~~work station~~ workstation to perform nail technology services for the public for a fee for each student in attendance containing:
    - a. A nail technology table;
    - b. ~~A client chair~~ Industry standard chairs appropriate for the skills being taught;
    - e. ~~A nail technology chair or stool;~~
    - ~~d.~~c. A disinfected, covered container to store disinfected tools and instruments as specified under R4-10-112;
    - ~~e.~~d. A container with wet disinfectant as specified under R4-10-112;
    - ~~f.~~e. A container for soiled tools and instruments as specified under R4-10-112;
    - ~~g.~~f. A waste receptacle as specified under R4-10-112; and
    - ~~h.~~g. A disinfectant for blood or body-fluid exposure as specified under R4-10-112.
  2. One container large enough to immerse two feet completely, for every five students in attendance during clinic instruction;
  3. Nail products for acrylics, gels, tips, wraps, and polishing; and
  4. One ultraviolet light.
- B.** ~~A~~ In addition to the nonreturnable student training kit required under R4-10-306(Q), a school licensee shall ensure a the following nonreturnable student training kit, containing at least the following, is items are provided to each enrolled nail technology student:
1. One simulated hand;
  2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;
  3. ~~One covered container to store disinfected tools and instruments as specified under R4-10-112;~~
  4. ~~A container for soiled tools and instruments as specified under R4-10-112;~~
  5. ~~Access to an electronic or standard textbook for professional nail technology and access to an electronic or hard copy of the Arizona Board of Cosmetology statutes and rules;~~
  - 6.3. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
  - 7.4. One electric nail file.
- C.** Curriculum requirements. The licensee shall ensure students in a nail technology course are provided the following 600-hour curriculum:
1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Board statutes and rules; and

2. Clinical and classroom instruction in nail technology including theory that involves nails, skin, and limbs:
  - a. Principles and practices of infection control and safety;
  - b. Recognition of diseases and the treatment of disorders of the nail and skin;
  - c. Massage and manipulation of the limbs;
  - d. Interpersonal skills and professional ethics;
  - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
  - f. Nail technology machines, tools, and instruments and their uses;
  - g. Clinical and classroom practice that includes nails, skin, and limbs;
  - h. Client pre- and post- treatment consultation, documentation, and analysis;
  - i. Manicuring, including use of nippers;
  - j. Pedicuring, including use of nippers;
  - k. Artificial nail enhancements (application and removal);
  - l. Alternative nail technology;
  - m. Electric file use;
  - n. Pedicure spa modalities;
  - o. Exfoliation modalities on limbs or the body; and
  - p. Required industry standards and ecology, including monitor duties.

**R4-10-B305. Distant Classrooms**

If an aesthetics, cosmetology, hairstyling, or nail technology school has a distant classroom, the school licensee shall ensure the equipment in the distant classroom is the same as that required under R4-10-305 and R4-10-306; and:

1. Private postsecondary and public educational facilities do not extend beyond Arizona boundaries;
2. A copy of the Board-issued license to operate the school or Board-issued, wallet-size license card to operate the school is posted in each distant classroom;
3. Duplicate instructor licenses are not required in a distant classroom; and
4. No clinic or public services are provided in the distant classroom.

**R4-10-B306. Approval of an Eyelash Technician Training Program**

**A. Board approval of an eyelash technician training program is non-transferable.**

**B. To obtain Board approval of an eyelash technician training program, an applicant shall submit the following to the Board:**

1. An application form available on the Board's website that contains:
  - a. The applicant's name, full mailing and physical addresses, e-mail address, federal tax identification number, and telephone number;
  - b. Name of person responsible for the eyelash technician training program if different from the applicant;
  - c. Name of the instructor who will be in charge of the approved training program and evidence the instructor meets the qualifications specified in R4-10-B307(B);
  - d. An outline of the training program including the topics to be addressed, hours devoted to each topic, and evidence the training program will comply with the standards specified in R4-10-B307(C), (D), and (E); and
  - e. A verification signed by the applicant indicating the training program has the equipment and supplies listed in R4-10-B307(A); and
2. A copy of the provisional registration, required under A.R.S. § 32-519, which will be completed and provided to each student to verify the student successfully completed the training program. A completed provisional registration shall include:
  - a. Name of the trainee,
  - b. Name of the approved training program,
  - c. Name of the person responsible for the approved training program,
  - d. Address of the approved training program,
  - e. Name of the instructor in charge of the approved training program,
  - f. Total number of hours of training completed, and
  - g. Dates of training completed.

**R4-10-B307. Requirements of an Eyelash Technician Training Program**

**A. The person responsible for an eyelash technician training program shall ensure the training program:**

1. Complies with R4-10-112;
2. Has the following minimum equipment and supplies:
  - a. Sufficient instructional fixtures and facilities for instructor and student use;
  - b. Covered, wet disinfectant container;
  - c. EPA-registered disinfectant;
  - d. Sufficient sinks with hot and cold running water;

- e. Separate receptacles for garbage and soiled linens;
  - f. One chalkboard or whiteboard;
  - g. Functioning time display;
  - h. A wall mirror; and
  - i. Sufficient mannequins;
3. Furnish establishment-quality equipment, tools, instruments, materials, and supplies for instructional purposes and for students to perform assignments except a student may be required to furnish small tools and instruments; and
4. Maintain all equipment, tools, instruments, materials, and supplies in good repair.
- B.** The person responsible for an eyelash technician training program shall ensure the instructor in charge of the training program is qualified. An instructor in charge is qualified if the instructor in charge:
- 1. Is a cosmetologist or aesthetician licensed by the Board before the effective date of this Section or an eyelash technician registered by the Board;
  - 2. Provides a notarized letter from an individual licensed or registered by the Board who has personal knowledge of the instructor's work and can verify that the instructor has practiced as an eyelash technician for at least 30 hours a week for two years; and
  - 3. Provides a statement indicating whether the instructor has ever had an aesthetics, cosmetology, hairstyling, nail technology, or instructor license or eyelash technology registration suspended or revoke in any state of the United States or a foreign country.
- C.** The person responsible for an eyelash technician training program shall ensure the training program includes the following minimum curriculum:
- 1. Ten hours of preclinical theoretical instruction in:
    - a. Eye structure,
    - b. Function and disorders of the eye and orbital areas,
    - c. Eyelash growth cycles,
    - d. Contraindications and allergic reactions,
    - e. Infection control,
    - f. Eye shapes and eyelash evaluation,
    - g. Product ingredients,
    - h. Health and safety, and
    - i. Board statutes and rules; and
  - 2. Twenty hours of clinical instruction in the practical application of eyelash extensions including:

- a. Client consultation.
  - b. Design.
  - c. Cleansing the eye area.
  - d. Applying eyelash extensions, and
  - e. Removing eyelash extensions.
- D.** As part of the clinical instruction specified under subsection (C)(2), the person responsible for an eyelash technician training program shall ensure each student is required to complete clinical service exercises in:
- 1. Applying eyelash extensions.
  - 2. Removing eyelash extensions, and
  - 3. Conducting a patch test before eyelash extension service.
- E.** The person responsible for an eyelash technician training program shall ensure:
- 1. All training is provided by the qualified instructor in charge, and
  - 2. No training is provided by a guest presenter or on a field trip.

#### **ARTICLE 4. SALONS ESTABLISHMENTS**

**~~R4-10-402.~~ R4-10-401. Changes Affecting a License to Operate a ~~Salon~~ an Establishment**

- A.** A license to operate an establishment is not transferrable.
- B.** A licensee ~~Except as provided in subsection (E), an establishment licensee~~ shall apply for a new license ~~to operate a salon~~ and pay the fee ~~for an initial salon license~~ specified in under R4-10-102 when ~~any of the following occur:~~
- 1. The ~~salon~~ physical address of the establishment changes;
  - 2. The name of the ~~salon~~ establishment changes;
  - 3. ~~If the salon licensee is a corporation, the controlling ownership is transferred or the corporation is reorganized; or~~ Ten percent or more of the ownership of the establishment changes; or
  - 4. If the ~~salon~~ establishment licensee is a corporation, limited liability company, or partnership, a corporate officer, partner, or statutory agent changes.
- ~~B.C.~~** A licensee shall apply for an updated license and pay the fee specified at R4-10-102(C)(8) when the ~~suite number of the salon changes.~~ The establishment licensee shall submit the application and fee required under subsection (B) within 10 days after a change specified under subsection (B) occurs.

~~C.D.~~ ~~A salon~~ The establishment licensee ~~and the manager~~ shall ensure a Board-issued license to operate ~~a salon~~ the establishment, indicating the correct name, physical location, and ownership of the ~~license establishment~~, is posted in the ~~salon establishment~~ before the ~~salon establishment~~ is opened for business.

E. If the only change to the physical address of an establishment is the suite number, the establishment licensee shall apply for an updated license rather than a new license and pay the fee specified at R4-10-102.

**~~R4-10-401.~~ R4-10-402. Application for a License to Operate a ~~Salon~~ Barber, Cosmetology, Aesthetics, Hairstyling, Nail, or Eyelash Establishment**

An applicant for a license to operate a ~~salon~~ barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment shall submit:

1. An application on a form ~~provided by the Board~~ available on the Board's website, which is signed by the applicant and provides provide the following information:
  - a. The applicant's name, ~~address~~ full mailing, physical, and e-mail addresses, e-mail address, telephone number, and federal tax identification number, ~~and signature~~;
  - b. If the applicant is a partnership, each partner's name, ~~address~~ full mailing and physical addresses, and an identification indication of whether each is a limited or general partner;
  - c. If the owner is an individual or sole proprietor, the person's Social Security or federal tax identification number;
  - ~~e.d.~~ If the applicant is a corporation, the state of incorporation and name, title, and mailing address of each officer of the corporation and the statutory agent;
  - ~~d.e.~~ If the applicant is a limited liability company, name and mailing address of each member, manager, and statutory agent;
  - ~~e.f.~~ The name under which the salon will be operated as registered with the Arizona Secretary of State; Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the applicant and anyone owning at least 10 percent of the applicant is authorized under federal law;
  - ~~f.g.~~ If the location of the ~~salon~~ barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment is changing, both the previous address old and new physical addresses;
  - h. If a change of ownership is occurring, the date the applicant will assume ownership;

- ~~g.i.~~ A history of the ~~salon~~ barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment including:
- i. If the location was previously licensed by the Board, the name of the previous barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment;
  - ii. The name of each business operating at the ~~salon~~ barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment address; and
  - iii. A statement of whether a barber, cosmetology, aesthetics, hairstyling, or nail license or eyelash technician registration of the applicant or any partner, corporate officer, or member or manager of the applicant has ever been suspended or revoked by any state or foreign country; and
- ~~h.i.~~ A statement of the kind of ~~salon~~ establishment to be operated: barber, cosmetology, aesthetics, hairstyling, or nail technology, or eyelash technology; ~~and~~
- ~~i.~~ ~~A statement by the applicant verifying the truthfulness of the information provided by the applicant.~~
2. The following evidence of business organization, as applicable:
    - a. ~~Copy of the partnership agreement for a partnership;~~
    - b. ~~Copy of the articles of incorporation and a~~  Certificate of Good Standing from the Arizona Corporation Commission for a corporation, or , if applicable.
    - e. ~~Copy of the articles of organization for a limited liability company.~~
  3. ~~A signed statement~~ The applicant's signature and verification that the information provided is true and correct and the barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment is in compliance with all Board statutes and rules and has all of the following in the salon: A.R.S. Title 32, Chapters 3 and 5, and this Chapter and has all basic equipment required to be in a barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment.
    - a. ~~Wet disinfectant;~~
    - b. ~~A dry, closed, disinfected container to store disinfected tools and instruments;~~
    - e. ~~A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required under R4-10-403;~~
    - d. ~~A work station;~~
    - e. ~~A restroom that meets the standards specified under R4-10-112(S); and~~
    - f. ~~The notice required under R4-10-111(F); and~~
  4. The fee required in R4-10-102.

**R4-10-403. Salon Barber, Cosmetology, Aesthetics, Hairstyling, Nail, or Eyelash Establishment Requirements and Minimum Equipment**

- A. A salon barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee shall ensure all services performed at the salon establishment for the public are consistent with the type of license issued to the licensee. A salon barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee shall ensure that, except as provided in ~~R4-10-405~~ R4-10-B402, all services are performed for the public by an individual who holds a Board-issued license or registration.
- B. A salon barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee shall ensure the salon establishment has enough equipment, materials, supplies, tools, and instruments to control infection and protect the safety of the public and employees.
- C. A salon barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee shall ensure the salon establishment has:
1. A ~~work station~~ workstation for each licensee or registrant using space within the salon barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment;
  2. If licensees using space in the salon establishment are performing barbering, cosmetology, or hairstyling services, at least one shampoo bowl and one hair dryer, which may be a blow dryer; and
  3. If licensees or registrants using space in the salon establishment are performing aesthetics, or nail technology, or eyelash technology services, at least one sink in addition to the restroom.
- D. A salon barber, cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee shall ensure licensed barbers, aestheticians, cosmetologists, hairstylists, and nail technicians, and eyelash technicians have enough equipment, materials, supplies, tools, and instruments to provide services, control infection, and disinfect between clients.

**R4-10-404. Renewal of an Establishment License**

An establishment licensee shall annually submit to the Board an electronic application for renewal on or before the license renewal date.

1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
2. A renewal application consists of:
  - a. A form available on the Board's website that contains:
    - i. The establishment's name;

- ii. The licensee's license number; and
- iii. If the licensee is an individual or partnership, the signature and tax identification number of the licensee or if the licensee is a corporation or limited liability company, the signature of the authorized signer and the tax identification number of the corporation or limited liability company;
- b. If the documentation submitted at the time of initial licensure was not a non-expiring work authorization, documentation specified under A.R.S. § 41-1080 that the establishment licensee's presence in the United States continues to be authorized under federal law; and
- c. The fee required in R4-10-102.

**~~R4-10-703.~~ R4-10-405. Shop Establishment Supervision**

- A. ~~The holder of a license to operate a shop~~ An establishment licensee shall designate a ~~barber~~ an individual licensed under this Chapter as manager to directly supervise the ~~shop~~ establishment during all hours of operation. If the establishment licensee has a personal license issued under Article 2 of this Chapter, the establishment licensee may directly supervise the establishment.
- B. ~~A license holder~~ The establishment licensee or supervising barber manager shall ensure that:
  - 1. Every individual, whether an employee or independent contractor, who practices barbering, cosmetology, aesthetics, hairstyling, nail technology, or eyelash technology in the ~~shop~~ establishment has a current license or registration issued under A.R.S. § 32-322 and R4-10-602 by the Board;
  - 2. Each required license, registration, and the most recent Board inspector's record are printed and displayed according to A.R.S. § 32-351(A) in a manner visible to establishment clients; and
  - 3. Each licensee and registrant complies with all applicable provisions of A.R.S. Title 32, Chapter 3 or 5, and this Chapter.
- C. The Board shall hold ~~a license holder~~ the establishment licensee and any supervising barber responsible for any violation of an applicable provision of A.R.S. Title 32, Chapter 3 or 5, or this Chapter.
- ~~D.~~ ~~The holder of a license to operate a shop who is an Arizona-licensed barber may directly supervise the shop.~~

**PART A. BARBERING**

**~~R4-10-704.~~ R4-10-A401. Shop Barbering Establishment Mobile Units**

- A. To operate a mobile unit as a ~~shop~~ barbering establishment, the owner of the mobile unit shall ~~make application~~ apply for a license under ~~R4-10-701~~ R4-10-A401.
- B. The Board shall issue a license to operate a mobile unit as a ~~shop~~ barbering establishment only if:
  1. The mobile unit is self-contained;
  2. The mobile unit meets all requirements for a ~~shop~~ barbering establishment specified under A.R.S. Title 32, Chapter 3, and this Chapter; and
  3. The owner of the mobile unit agrees to provide the Board with written or oral notice at least 15 days before the mobile unit is placed in a location or moved to a new location.

## **PART B. COSMETOLOGY**

### **~~R4-10-404, R4-10-B401.~~ Mobile Services**

- A. If a ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee provides mobile services as an extension of the ~~salon~~ establishment, the ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee shall advertise the mobile service using the name of the ~~salon~~ establishment on the Board-issued license. The ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee and manager shall ensure mobile services comply with ~~the Arizona Board of Cosmetology~~ statutes and rules.
  1. A ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee providing mobile cosmetology, aesthetics, hairstyling, nail technology, or ~~aesthetics, eyelash technology~~ services shall ensure licenses are posted as required under R4-10-111.
  2. A ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee providing mobile services shall ensure client appointments are made through the ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment using an appointment book that lists the appointments and locations where services are performed.
  3. Mobile services are subject to inspection by the Board at any time.
  4. If a retrofitted motor vehicle is used to provide mobile services, the ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee and manager shall ensure the vehicle has the same equipment as specified under ~~R4-10-403~~ R4-10-B402 and complies with safety and infection control requirements specified under R4-10-112.
  5. If mobile services are provided in a location other than a retrofitted motor vehicle, the ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment licensee and manager shall ensure equipment is disinfected before use and stored as specified under R4-10-112.

- B. If a retrofitted motor vehicle is used exclusively as a mobile facility dispatched from ~~at a~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment address, the ~~salon~~ establishment licensee and manager of the mobile facility shall:
1. Comply with all ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment requirements, including infection control and equipment requirements, specified in this Chapter;
  2. Maintain a complete and current list of appointment locations at the cosmetology, aesthetics, hairstyling, nail, or eyelash establishment address and ensure the list is displayed as specified in the application for a license to operate a ~~salon~~ cosmetology, aesthetics, hairstyling, nail, or eyelash establishment and available to an inspector at all times when the retrofitted motor vehicle is open for business; and
  3. Comply with ~~the Arizona Board of Cosmetology~~ statutes and rules.

**~~R4-10-405. R4-10-B402.~~ Shampoo Assistants**

- A. A ~~salon~~ cosmetology or hairstyling establishment licensee may hire an individual who is not licensed by the Board as a shampoo assistant to shampoo and apply conditioner to an individual's hair, comb the hair to remove tangles, and remove rollers.
- B. A ~~salon~~ cosmetology or hairstyling establishment licensee shall ensure a shampoo assistant does not:
1. Apply hair color or permanent wave solution or neutralizer; or
  2. Remove rods, tint, relaxers, or chemical solutions from the hair.

**ARTICLE 5. ~~GENERAL PROVISIONS~~ Repealed**

**R4-10-501. ~~Definitions~~ Renumbered**

The definitions in A.R.S. § 32-301 apply to this Chapter. Additionally, the following definitions apply to this Chapter unless the context otherwise requires:

~~“Barber pole” means a stationary or revolving sign compose of a vertical cylinder or pole with alternating, diagonal, stripes of any combination including red, white, and blue or a likeness of the sign.~~

~~“Barbering implement” means any tool or device used for barbering.~~

~~“Certified hour” means instructional hours for which a barber school has issued a student a Certification of Completion or Withdrawal.~~

~~“Change of ownership” means there is a change of 10 percent or more of the owners holding a license to operate a shop or school.~~

~~“Diploma from a high school or its equivalent,” as used in A.R.S. § 32-323(B), means any of the following:~~

~~A document that certifies successful course completion from any accredited secondary school in the United States, a U.S. territory, the District of Columbia, or a foreign country;~~

~~A high school equivalency diploma that certifies successful passing of a General Education Development “GED” test; or~~

~~An academic degree from an accredited college or university.~~

~~“Direct supervision” means a supervisor is physically present and observing the work of a supervisee.~~

~~“Disinfect” means the use of chemicals to kill most microbial life that can lead to infection in humans.~~

~~“Domestic administration” means barbering performed:~~

~~On oneself; or~~

~~On another person to whom the practitioner is related as follows:~~

~~Father,~~

~~Mother,~~

~~Grandfather,~~

~~Grandmother,~~

~~Child,~~

~~Step-child,~~

~~Brother,~~

~~Sister,~~

~~Foster parent,~~

~~Legal guardian,~~

~~Step-parent, or~~

~~Spouse.~~

~~“EPA” means the United States Environmental Protection Agency.~~

~~“Establishment” means a distinct physical location in which a shop or school is located but does not include an offsite training facility.~~

~~“Instructional hour” means 60 minutes during which a student receives classroom or practical instruction.~~

~~“Liquid sanitizer” means a container large enough to immerse completely any barbering implement that requires disinfecting by a solution made from an EPA-registered disinfectant.~~

~~“One year’s experience as a licensed barber,” as used in A.R.S. § 32-322(C), means that during 12 consecutive months, an individual:~~

~~Maintained a valid license prescribed under A.R.S. § 32-322, and~~

~~Engaged in barbering at least 1,500 hours.~~

~~“Owner” means a person that has controlling interest in a barber shop or school or the owner’s designee.~~

~~“Patron” means an individual who receives barbering services.~~

~~“Practiced barbering for at least two years,” as used in A.R.S. § 32-323(B), means that during 24 consecutive months, an individual engaged in barbering at least 1,500 hours during each 12-month consecutive period.~~

~~“Tool drawer” means an ultraviolet electrical sanitizer or a clean, dust-proof cabinet, drawer, or other container that is disinfected with an EPA-registered disinfecting agent and used exclusively to store disinfected barbering implements.~~

~~“Two years of high school education or its equivalent,” as used in A.R.S. § 32-322(B), means either of the following:~~

~~Successfully completing 10 high school credits, or~~

~~Passing a GED test.~~

~~“Workstation” means a specific location within a shop, mobile unit, offsite training facility, or school where barbering is performed not including hair-cleaning activity.~~

#### **R4-10-502. Fees and Service Charges Repealed**

**A.** Under authority of A.R.S. § 32-328, the Board charges the following fees:

† Barber:

a. Examination \$100.

- b. ~~License by reciprocity \$175.~~
  - e. ~~Initial license \$40.~~
  - d. ~~Renewal valid for two years \$80.~~
2. ~~Instructor:~~
- a. ~~Examination \$100.~~
  - b. ~~Initial license \$50.~~
  - e. ~~Renewal valid for two years \$60.~~
3. ~~Shop:~~
- a. ~~Application and initial inspection \$150.~~
  - b. ~~Change of location \$85.~~
  - e. ~~Change of ownership \$85.~~
  - d. ~~Renewal \$50 annually.~~
4. ~~Late-renewal fee for any license issued under subsections (A)(1) through (3):~~
- a. ~~First time in a five-year period \$25 plus the renewal fee.~~
  - b. ~~Second time in a five-year period \$50 plus the renewal fee.~~
  - e. ~~Third time in a five-year period \$75 plus the renewal fee.~~
5. ~~School:~~
- a. ~~Application and initial inspection \$1,000.~~
  - b. ~~Change of location \$500.~~
  - e. ~~Change of ownership \$500.~~
  - d. ~~Renewal \$400 annually.~~
  - e. ~~Late-renewal fee:~~
    - i. ~~First time in five-year period \$50 plus the renewal fee.~~
    - ii. ~~Second time in five-year period \$100 plus the renewal fee.~~
    - iii. ~~Third time in five-year period \$150 plus the renewal fee.~~
6. ~~Re-examination fee for an examinee who failed part of an examination after an original fee assessment under subsection (A)(1)(a) or (A)(2)(a):~~
- a. ~~Written \$25.~~
  - b. ~~Practical \$50.~~
7. ~~A duplicate of any license issued under this Chapter \$20.~~
- B.** ~~The Board charges the following for copies of non-confidential records:~~
- 1. ~~Name and address of licensee \$.25 per licensee.~~
  - 2. ~~Public records \$.50 per page.~~

~~C. As authorized under A.R.S. § 44-6852, the Board shall charge and collect from an applicant that provides the Board with a check that is dishonored by the bank the actual amount assessed by the bank plus a \$10 service fee.~~

**R4-10-503. Fee Payment Repealed**

~~A. A person shall pay any fee required by the Board in full by certified instrument, money order, or credit or debit card.~~

~~B. The Board shall consider a fee payment timely if:~~

- ~~1. The Board receives the fee on or before the date due, or~~
- ~~2. The fee is postmarked or electronically submitted on or before the date due.~~

**R4-10-504. Safety and Infection Control Provisions Repealed**

~~A. A licensee under A.R.S. Title 32, Chapter 3, and this Chapter shall adhere to the following safety and infection control procedures:~~

~~1. Use barbering implements that are:~~

- ~~a. New if intended for use on a single patron and disposed of immediately after use in a covered waste receptacle; or~~
- ~~b. In good repair, free of defect, and disinfected as described in subsection (A)(2) if intended for multiple use;~~

~~2. Disinfect any barbering implement intended for multiple use according to the following procedure:~~

- ~~a. For a non-electric barbering implement and removable parts of an electric barbering implement, other than a scissors or razor:~~
  - ~~i. Remove all hair or debris;~~
  - ~~ii. Wash with soap and water;~~
  - ~~iii. Rinse with clean water;~~
  - ~~iv. Completely immerse in an EPA-registered disinfectant used according to manufacturer's instructions;~~
  - ~~v. Dry with a clean cloth or air dry; and~~
  - ~~vi. Store in a tool drawer;~~
- ~~b. For a scissors or a razor:~~
  - ~~i. Follow the procedure under subsection (A)(2)(a); or~~



- ~~b. Disinfected by laundering with detergent and chlorine bleach if intended for multiple use;~~
- ~~e. Stored in a closed container when disinfected before use, and~~
- ~~d. Stored in a closed, ventilated, container separate from disinfected towels or cloths after use;~~
- 6: ~~Maintain a separate, covered, non-leaking, receptacle for garbage and hair and empty, clean, and disinfect the receptacle daily;~~
- 7: ~~Exposure to blood or other body fluids. If there is a blood spill or exposure to other body fluids while performing a barbering service, a licensee shall stop the service and:~~
  - ~~a. If the blood spill or body fluid is on a patron, the licensee shall:~~
    - ~~i. Put disposable gloves on both of the licensee's hands;~~
    - ~~ii. Use a disposable instrument to clean the wound with an antiseptic solution and dispose of the soiled instrument immediately;~~
    - ~~iii. Use a disposable instrument to apply powdered alum, styptic powder, or a cyanoacrylate to stop bleeding and dispose of the soiled instrument immediately;~~
    - ~~iv. Cover the wound with a sterile bandage; and~~
    - ~~v. Dispose of the gloves used;~~
  - ~~b. If the blood spill or body fluid results from an injury to the licensee, the licensee shall comply with subsections (A)(7)(a)(ii) through (iv) and cover the affected area with a clean, fluid-proof glove or finger cover;~~
  - ~~e. If the blood spill or body fluid contacts any surface area, the licensee shall disinfect the surface area with an EPA-registered disinfectant used according to the manufacturer's instructions; and~~
  - ~~d. If the blood spill or body fluid contacts any barbering instrument, the licensee shall disinfect the barbering instrument as specified in subsection (A)(2);~~
- 8: ~~Patron protection. A licensee shall protect the health and safety of a patron by:~~
  - ~~a. Washing the licensee's hands with liquid or powder soap and water before serving each patron;~~
  - ~~b. Disinfecting the head rest of the barber or styling chair after each use or at least daily;~~
  - ~~e. Placing a clean towel or paper sheet on the head rest of the barber or styling chair for each patron;~~
  - ~~d. Using a clean neck strip with each patron to avoid having the patron contact a non-sanitized object;~~
  - ~~e. Not performing a barbering service on a patron while the licensee has a contagious disease unless a medically approved measure is used to prevent transmission of the disease; and~~

- f. ~~Not knowingly performing a barbering service on a patron who has a contagious disease;~~
- 9. ~~Prohibited products. To protect the health and safety of a patron, a licensee shall not use any of the following products when performing barbering services:~~
  - a. ~~Methyl Methacrylate liquid monomers;~~
  - b. ~~Alum or other astringents in stick or lump form;~~
  - c. ~~Fumigants such as formalin (formaldehyde) tablets or liquids;~~
  - d. ~~Any product that penetrates the dermis layer of the skin; and~~
  - e. ~~Any product that is banned or deemed to be poisonous or unsafe by any responsible federal, state, or local governmental entity.~~
- 10. ~~Prohibited practices. To protect the health and safety of a patron, a licensee shall not engage in the following practices when performing barbering services:~~
  - a. ~~Allow any animal except a service animal on the establishment premises. A covered aquarium that is maintained in a sanitary condition is allowed; or~~
  - b. ~~Use a shaving brush and mug unless the shaving brush and mug are personally owned by the patron.~~
- B.** ~~In addition to licensee requirements under subsection (A), the holder of a license to operate a shop or school shall:~~
  - 1. ~~Ensure that flooring within six feet of each workstation is made of smooth, durable, and impervious material;~~
  - 2. ~~Maintain all furniture and fixtures of each establishment in a clean and orderly manner at all times;~~
  - 3. ~~Provide at least one restroom located on or near the establishment premises; and~~
  - 4. ~~Comply with all state, local, and federal requirements.~~

**R4-10-506. Change of Ownership or Location Repealed**

- A.** ~~A license issued to operate a shop or school is not transferable to:~~
  - 1. ~~A location other than the location specified on the license; or~~
  - 2. ~~An owner other than the owner specified on the license.~~
- B.** ~~A change in the owner or location of a shop or school requires that the owner apply for a new license.~~
- C.** ~~At least 15 days before a change in location or ownership of a shop or school, the owner of the re-located shop or school or the new owner shall submit the following to the Board:~~
  - 1. ~~Written notification of the change;~~

2. ~~A completed application to operate a shop, as prescribed under R4-10-701, or school, as prescribed under R4-10-801; and~~
3. ~~The applicable fee prescribed under R4-10-502(A)(3)(b), (A)(3)(c), (A)(5)(b), or (A)(5)(c).~~

**R4-10-507. Inspections Repealed**

- ~~**A. Applicability.** This Section applies to any barbering establishment operating within Arizona and any establishment for which application for licensure has been made.~~
- ~~**B. Time of inspection.** An inspector designated by the Board:~~
1. ~~Shall inspect the premises of each establishment for which an application for licensure has been made;~~
  2. ~~Shall inspect each establishment's premises one or more times per calendar year, and~~
  3. ~~May inspect an establishment at any time permitted under A.R.S. § 32-304(B)(2).~~
- ~~**C. Inspection procedure.** According to the requirements of A.R.S. Title 32, Chapter 3, and this Chapter, the Board's inspector shall document that:~~
1. ~~Each applicable license issued is current and displayed as prescribed under A.R.S. § 32-351;~~
  2. ~~Equipment and barbering implements are present, clean, and in appropriate quantity to the number of employees in the establishment;~~
  3. ~~Each product, implement, and procedure is maintained or followed appropriately by establishment staff; and~~
  4. ~~All applicable statutes and rules are followed.~~
- ~~**D. Inspection findings.** An inspector shall submit a copy of a completed inspection report to:~~
1. ~~The license holder or individual assigned by the license holder to operate the inspected establishment; and~~
  2. ~~The Board.~~
- ~~**E. Disciplinary action.** The Board shall follow disciplinary procedures prescribed under A.R.S. §§ 32-352 through 32-356 for any inspection finding indicating a violation of any provision under A.R.S. Title 32, Chapter 3, or this Chapter.~~

**R4-10-508. Licensing Time-frames Repealed**

- ~~**A.** The overall time frame described in A.R.S. § 41-1072(2) for all licenses issued by the Board under A.R.S. Title 32, Chapter 3, and this Chapter is specified in Table 1, following this Section. An~~

~~applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25 percent of the overall time-frame.~~

- ~~**B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a license issued by the Board is specified in Table 1, following this Section and begins on the date the Board receives a license application.
  - ~~1. If the application is incomplete, the Board shall send the applicant a notice of administrative deficiency specifying the information or documents required to complete the application. The administrative completeness review and overall time-frames are suspended until the Board receives the missing information or documents.~~
  - ~~2. If the application is complete, the Board shall send the applicant a notice of administrative completeness.~~~~
- ~~**C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for a license issued by the Board begins on the postmark date of the notice of administrative completeness sent under subsection (B)(2).
  - ~~1. As part of the substantive review for an initial shop or school license, the Board shall inspect the applicant's premises according to the procedure prescribed under R4-10-507.~~
  - ~~2. During the substantive review time frame, the Board may send a single comprehensive written notice of request for additional information that includes a written statement of the additional information needed for the Board to make a decision. The substantive review and overall time-frames are suspended from the postmark date of the comprehensive written request for additional information until the Board receives the additional information. The Board and the applicant may agree in writing to allow the Board to submit additional supplemental requests for information.~~~~
- ~~**D.** The Board shall close the file of an applicant if the applicant fails to submit all required information to the Board within the time specified in Table 1, following this Section. If a person whose file is closed wishes to be considered further for licensure, the person shall submit another application and fee.~~
- ~~**E.** Within the overall time-frame specified in Table 1, following this Section, the Board shall:
  - ~~1. Grant a license to a person that meets all requirements in A.R.S. Title 32, Chapter 3 and this Chapter; or~~
  - ~~2. Deny a license to a person that fails to meet all requirements in A.R.S. Title 32, Chapter 3 and this Chapter. The Board shall include in the notice of denial the reason for the denial and information regarding the right to appeal the denial under A.R.S. Title 41, Chapter 6, Article 10.~~~~

**Table 1. ~~Time frames (in days)~~ Renumbered**

<b>License</b>	<b>Authority</b>	<b>Overall Time-frame</b>	<b>Administrative Time-frame</b>	<b>Time to Respond</b>	<b>Substantive Time-frame</b>	<b>Time to Respond</b>
Barber	A.R.S. §§ <del>32-322;</del> <del>32-327</del>	28	21	90	7	30
Instructor	A.R.S. §§ <del>32-323;</del> <del>32-327</del>	28	21	90	7	30
School	A.R.S. §§ <del>32-325;</del> <del>32-327</del>	90	30	30	60	60
Shop	A.R.S. §§ <del>32-326;</del> <del>32-327</del>	90	30	30	60	60

**R4-10-509. License Renewal Repealed**

~~A. To renew any license issued under this Chapter, a licensee shall submit to the Board:~~

- ~~1. The application for renewal form attached to the license issued by the Board;~~
- ~~2. The renewal fee for the applicable license as prescribed under R4-10-502(A)(1)(d), (A)(2)(e), (A)(3)(d), or (A)(5)(d):~~
  - ~~a. No earlier than 30 days before the expiration date; and~~
  - ~~b. No later than midnight on the expiration date; and~~
- ~~3. If the documentation submitted under R4-10-602(D)(3), R4-10-603(C)(4), R4-10-701(B)(2)(a)(v), or R4-10-801(C)(4)(a)(iii) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired.~~

~~B. As provided under A.R.S. § 32-355, a licensee that fails to renew a license timely shall immediately cease providing the services authorized by the license.~~

~~C. An expired license issued under this Chapter may be renewed within five years after the date of expiration by complying with subsection (A) and paying the late renewal fee prescribed under R4-10-502.~~

**ARTICLE 6. EXAMINATION; BARBER AND INSTRUCTOR LICENSE APPLICATION**

**Repealed**

**R4-10-601. Examinations Renumbered**

**A. Required examinations:**

1. Except for an applicant for licensure by reciprocity, an applicant for:
  - a. ~~A barber license shall pass an examination covering the topics listed in A.R.S. § 32-324(C); and~~
  - b. ~~An instructor license shall pass the examination described in A.R.S. § 32-324(D);~~
2. ~~As authorized under A.R.S. § 32-322(A)(2) and A.R.S. § 32-323(A)(2), the Board shall ensure that applicants for licensure by reciprocity possess necessary qualifications by requiring:~~
  - a. ~~All applicants for licensure by reciprocity to pass an examination regarding A.R.S. Title 32, Chapter 3 and this Chapter; and~~
  - b. ~~Applicants for licensure by reciprocity as an instructor to pass an examination regarding procedures the Board uses to measure the practical skills of barbering students.~~

**B. ~~In addition to requirements prescribed under A.R.S. § 32-324, the Board shall make the following provisions for any examination administered by the Board:~~**

1. ~~The Board shall send an applicant written notification of an assigned examination time and location at least seven days before a scheduled examination.~~
2. ~~Examination language provision. The Board shall:~~
  - a. ~~Administer an examination under this Section in English; and~~
  - b. ~~Allow an applicant for a barber license to provide a reader or personal foreign language interpreter who shall not be:~~
    - i. ~~A currently or previously licensed barber or cosmetologist;~~
    - ii. ~~A barber or cosmetology instructor, or~~
    - iii. ~~A barber or cosmetology student in any state or foreign country.~~
3. ~~Examination integrity provision. The Board shall not:~~
  - a. ~~Disclose examination questions; or~~
  - b. ~~Return a completed examination or other examination records kept by the Board to a school or applicant.~~
4. ~~The Board shall dismiss an applicant from an examination under penalty of examination fee forfeiture if the applicant:~~

- a. ~~Cheats, or~~
- b. ~~Solicits any information from another person except the examiner.~~
- 5. ~~The Board shall require re-examination if an applicant fails to apply for a license within one year after passing an examination.~~
- 6. ~~For purposes of an examination's practical portion, an applicant for a barber license shall supply:~~
  - a. ~~All necessary barbering implements and supplies; and~~
  - b. ~~A live model who shall not be:~~
    - i. ~~A currently or previously licensed barber or cosmetologist;~~
    - ii. ~~A barber or cosmetology instructor; or~~
    - iii. ~~A barber or cosmetology student in any state or foreign country.~~
- 7. ~~If an applicant fails a portion of an examination, the Board shall allow the applicant to meet with Board staff and participate in a general discussion of the failed portion of the examination if the applicant submits a written request to the Board within 30 days after the examination.~~

**R4-10-602. Barber License Application Renumbered**

- A. ~~An applicant for licensure as a barber shall attach the following to the application attachments required under subsections (B) or (C):~~
  - 1. ~~Proof that the applicant is at least 16 years old;~~
  - 2. ~~Proof that the applicant has at least two years of high school education or its equivalent. Acceptable proof includes an official transcript from the high school attended or a copy of a high school diploma or GED;~~
  - 3. ~~Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;~~
  - 4. ~~A photograph, as prescribed under A.R.S. § 32-322(A)(3), that is suitable for use on an identification card and:~~
    - a. ~~Of the applicant only;~~
    - b. ~~U.S. passport sized; and~~
    - e. ~~Signed by the applicant across the front without blocking the face;~~
  - 5. ~~If currently licensed as a barber in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and~~
  - 6. ~~The applicable fee specified in R4-10-502(A)(1).~~

~~**B.** License by examination. In addition to the requirements under subsection (A), an applicant for licensure by examination shall submit an application form, which is available from the Board, and provide the following information:~~

- ~~1. Full name;~~
- ~~2. Other names, if any, by which the applicant has been known;~~
- ~~3. Full address;~~
- ~~4. Telephone number;~~
- ~~5. Social Security number;~~
- ~~6. Date and place of birth;~~
- ~~7. Unless currently licensed in another state with which Arizona does not have a reciprocity agreement, name and location of barber school attended;~~
- ~~8. Unless currently licensed in another state with which Arizona does not have a reciprocity agreement, the number of certified hours obtained from a barber school;~~
- ~~9. A statement whether the applicant has ever been licensed as a barber in Arizona and if so, when;~~
- ~~10. A statement whether the applicant has ever been licensed in another state or country as a barber or apprentice barber and if so, when and where;~~
- ~~11. A statement whether the applicant has had a barber license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;~~
- ~~12. Any other information required by the Board; and~~
- ~~13. The applicant's notarized signature and verification that the information provided is correct and complete.~~

~~**C.** License by reciprocity. In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (13), an applicant for licensure by reciprocity shall submit the following:~~

- ~~1. A copy of a current barber license issued by a state with which Arizona has a reciprocity agreement; and~~
- ~~2. Documentation of at least one year of barbering work experience. The documentation shall contain the notarized signature of the barber where the work was performed.~~

**R4-10-603. Instructor License Application Renumbered**

~~**A.** An applicant for licensure as an instructor shall attach the following to the application required under subsections (B) and (C):~~

- ~~1. Proof that the applicant is at least 19 years old;~~

2. ~~Proof that the applicant has a high school diploma or its equivalent;~~
3. ~~Proof that the applicant has practiced barbering for at least two years. The proof shall contain the notarized signature of the barber or barbers where the work was performed;~~
4. ~~Documentation specified under A.R.S. § 41-1080(A) that the applicant's presence in the U.S. is authorized under federal law;~~
5. ~~A photograph that is suitable for use on an identification card and:~~
  - a. ~~Of the applicant only;~~
  - b. ~~U.S. passport sized; and~~
  - e. ~~Signed by the applicant across the front without blocking the face;~~
6. ~~If currently licensed as a barber instructor in another state with which Arizona does not have a reciprocity agreement, a copy of the license; and~~
7. ~~The applicable fee specified in R4-10-502(A)(2).~~

**B.** ~~License by examination. In addition to the requirements under subsection (A), an applicant for licensure by examination shall submit an application form, which is available from the Board, and provide the following information:~~

1. ~~Full name;~~
2. ~~Other names, if any, by which the applicant has been known;~~
3. ~~Full address;~~
4. ~~Telephone number;~~
5. ~~Social Security number;~~
6. ~~Birth date;~~
7. ~~Current Arizona barber license number;~~
8. ~~If the applicant attended school for training as a barber instructor:~~
  - a. ~~Name and address of barbering school attended for instructor training;~~
  - b. ~~Total hours of instructor training; and~~
  - e. ~~Dates during which instructor training was obtained;~~
9. ~~A statement regarding whether the applicant:~~
  - a. ~~Has ever been licensed as a barber instructor in Arizona and if so, when;~~
  - b. ~~Has ever been a licensed barber instructor in any other country or state and if so, the country or state and dates of licensure as a barber instructor; and~~
  - e. ~~Has had a former instructor license suspended or revoked in the five years before the date of application and if so, a complete explanation of the circumstances;~~

- ~~10. Any other information required by the Board; and~~
- ~~11. The applicant's notarized signature verifying that the information provided is correct and complete.~~
- C.** License by reciprocity. In addition to the requirements under subsections (A) and (B)(1) through (6) and (9) through (11), an applicant for an instructor license by reciprocity shall submit the following:
  - 1. A copy of the current license to instruct barber students issued by a state that has a reciprocity agreement with Arizona; and
  - 2. Documentation of at least one year's experience as a licensed instructor of barber students. The documentation shall contain the notarized signature of the owner of the barber school at which instruction was provided.

### **ARTICLE 7. SHOPS Repealed**

#### **R4-10-701. Application for a License to Operate a Shop Repealed**

- A.** ~~To apply for a license to operate a shop, a person shall submit to the Board the items under subsections (B) and (C). A person that intends to operate more than one shop shall apply for and be issued a separate license to operate each shop. A person shall not operate a shop before a license is issued.~~
- B.** ~~On a form available from the Board, an applicant for a license to operate a shop shall provide the following information:~~
  - 1. ~~Indicate the applicant's requested licensing action:~~
    - a. ~~A license to operate a new shop;~~
    - b. ~~A change of location of an operating shop including the following information:~~
      - i. ~~The Board file number, and~~
      - ii. ~~Both the old and new addresses of the shop; or~~
    - e. ~~A change of ownership of an operating shop including the following information:~~
      - i. ~~Former owner's name;~~
      - ii. ~~Former shop name, if the shop name is changed;~~
      - iii. ~~Board file number; and~~
      - iv. ~~A copy of the shop's bill of sale or the signature of the former owner on the application;~~
  - 2. ~~Ownership information:~~
    - a. ~~If the owner is an individual or partnership:~~
      - i. ~~Name;~~
      - ii. ~~Address;~~

- iii. Telephone number;
  - iv. Social Security number of the individual or each partner owning at least 10 percent of the partnership; and
  - v. Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the individual or each partner owning at least 10 percent of the partnership is authorized under federal law; or
- b. If the owner is a corporation:
- i. Corporate name;
  - ii. Names of all individuals owning at least 10 percent of the corporation;
  - iii. Tax identification number of the corporation;
  - iv. Name and telephone number of a contact person;
  - v. Name and address of the statutory agent, if required by law;
  - vi. Address of the corporation; and
  - vii. Telephone number of the corporation;
3. Shop information:
- a. Shop name;
  - b. Full physical address of the shop;
  - c. Telephone number; and
  - d. A map of approximate shop location indicating the names of major cross streets;
4. If known at the time of application, the name and Arizona license number of the barber who will directly supervise the shop on behalf of the license holder;
5. A projected date for the shop to open;
6. A list of equipment in the shop including the total number of the following:
- a. Barber or styling chairs;
  - b. Sinks with hot and cold running water;
  - c. Tool drawers;
  - d. Liquid sanitizers;
  - e. Workstations;
  - f. Soiled towel receptacles; and
  - g. Garbage and hair receptacles;
7. A description of the shop's floor covering;
8. An indication of whether a license to operate the shop has been or will be obtained under Article 4;

9. ~~Any other information required by the Board; and~~
  10. ~~The applicant's verification that the information contained on the application is correct and complete, and the applicant's notarized signature.~~
- C.** ~~Fee. In addition to the completed application form required under subsection (B), an applicant shall submit to the Board the fee specified in R4-10-502(A)(3) for the licensing action requested under subsection (B)(1).~~

**R4-10-702. Basic Equipment Required in a Shop Repealed**

- A.** ~~The holder of a license to operate a shop shall ensure that the shop has at least the following equipment:~~
1. ~~A barber or styling chair;~~
  2. ~~One sink, which has hot and cold running water, for every two barber or styling chairs and located no more than six feet from the barber or styling chairs;~~
  3. ~~Liquid or powder soap and paper towels for use at each sink;~~
  4. ~~A separate, covered, receptacle for each of the following:~~
    - a. ~~Garbage and hair, and~~
    - b. ~~Reusable towels or cloths that are soiled;~~
  5. ~~One tool drawer and one liquid sanitizer for each barber or styling chair and the necessary EPA-registered disinfectants for each;~~
  6. ~~One wall mirror located near each barber or styling chair;~~
  7. ~~One workstation for each barber or styling chair; and~~
  8. ~~Cabinet in which to store additional supplies.~~
- B.** ~~Subsection (A)(2) applies only to shops licensed under R4-10-701 after the effective date of this Section.~~

**R4-10-703. Shop Supervision Renumbered**

- A.** ~~The holder of a license to operate a shop shall designate a barber licensed under this Chapter to directly supervise the shop during all hours of operation.~~
- B.** ~~A license holder or supervising barber shall ensure that:~~
1. ~~Every individual, whether an employee or independent contractor, who practices barbering in the shop has a current license issued under A.R.S. § 32-322 and R4-10-602;~~

2. ~~Each required license and the most recent Board inspector's record are displayed according to A.R.S. § 32-351(A); and~~
  3. ~~Each licensee complies with all applicable provisions of A.R.S. Title 32, Chapter 3, and this Chapter.~~
- ~~C. The Board shall hold a license holder and any supervising barber responsible for any violation of an applicable provision of A.R.S. Title 32, Chapter 3, or this Chapter.~~
- ~~D. The holder of a license to operate a shop who is an Arizona licensed barber may directly supervise the shop.~~

**R4-10-704. Shop Mobile Units Renumbered**

- ~~A. To operate a mobile unit as a shop, the owner of the mobile unit shall make application for a license under R4-10-701.~~
- ~~B. The Board shall issue a license to operate a mobile unit as a shop only if:~~
1. ~~The mobile unit is self-contained;~~
  2. ~~The mobile unit meets all requirements for a shop specified under A.R.S. Title 32, Chapter 3, and this Chapter; and~~
  3. ~~The owner of the mobile unit agrees to provide the Board with written or oral notice at least 15 days before the mobile unit is placed in a location or moved to a new location.~~

**R4-10-705. Display of Barber Pole Repealed**

- ~~A. Under A.R.S. § 32-355(A)(4), it is unlawful to display a sign or advertise as being engaged in the practice or business of barbering without being licensed under A.R.S. Title 32, Chapter 3, and this Chapter.~~
- ~~B. The Board has trademarked through the Office of the Secretary of State the barber pole as a sign of the barbering business.~~
- ~~C. A business shall not display a barber pole unless a barber licensed under A.R.S. Title 32, Chapter 3, and this Chapter is available to provide barbering services during the business hours that the barber pole is displayed.~~

**ARTICLE 8. SCHOOLS Repealed**

**R4-10-801. Application for a License to Operate a School Repealed**

- ~~A. Before submitting an application under this Section, an applicant for a license to operate a school may request that Board staff review the proposed application and perform a courtesy inspection of the proposed school location.~~
- ~~B. The owner of a barber school that operates in more than one location, except at an offsite training facility, shall apply for and obtain a separate license to operate the barber school at each location.~~
- ~~C. On a form available from the Board an applicant for a license to operate a barber school shall provide the following information:~~
  - ~~1. Indicate the applicant's requested licensing action:~~
    - ~~a. A license to operate a new school;~~
    - ~~b. A change of location of an operating school including the following information:~~
      - ~~i. The Board file number, and~~
      - ~~ii. Both the old and new addresses of the school; or~~
    - ~~e. A change of ownership of an operating school including the following information:~~
      - ~~i. Former owner's name;~~
      - ~~ii. Former school name, if the school name is changed;~~
      - ~~iii. Board file number; and~~
      - ~~iv. A copy of the school's bill of sale or the signature of the former owner on the application;~~
  - ~~2. School information:~~
    - ~~a. School name;~~
    - ~~b. Physical location address of the school; and~~
    - ~~e. Telephone number;~~
  - ~~3. Applicant information:~~
    - ~~a. Name;~~
    - ~~b. Address, and~~
    - ~~e. Telephone number;~~
  - ~~4. Owner information:~~
    - ~~a. If the owner is an individual or partnership:~~
      - ~~i. Name of the individual and all partners owning at least 10 percent of the partnership;~~
      - ~~ii. Social Security number of the individual and all partners owning at least 10 percent of the partnership; and~~
      - ~~iii. Documentation specified under A.R.S. § 41-1080(A) that the presence in the U.S. of the individual and all partners owning at least 10 percent of the partnership is authorized under federal law; or~~

- b. ~~If the owner is a corporation:~~
  - i. ~~Corporate name;~~
  - ii. ~~Names of all individuals owning at least 10 percent of the corporation;~~
  - iii. ~~Tax identification number of the corporation;~~
  - iv. ~~Name and telephone number of a contact person;~~
  - v. ~~Name and address of the statutory agent, if required by law;~~
  - vi. ~~Address of corporation; and~~
  - vii. ~~Telephone number of corporation;~~
- 5. ~~School supervisor information:~~
  - a. ~~Name, and~~
  - b. ~~Arizona instructor license number;~~
- 6. ~~A list of equipment in the school including the total number of the following:~~
  - a. ~~Barber chairs;~~
  - b. ~~Sinks,~~
  - e. ~~Tool drawers;~~
  - d. ~~Liquid sanitizers;~~
  - e. ~~Latherizers;~~
  - f. ~~Soiled-towel receptacles;~~
  - g. ~~Garbage and hair receptacles;~~
  - h. ~~Workstations, and~~
  - i. ~~Student lockers;~~
- 7. ~~A description of the floor covering in the area in which students practice barbering skills;~~
- 8. ~~Number and square footage of classrooms;~~
- 9. ~~Number of students to be admitted;~~
- 10. ~~Number of licensed instructors;~~
- 11. ~~Hours during which instruction will be provided;~~
- 12. ~~A projected date for the Board's initial inspection;~~
- 13. ~~Any other information required by the Board; and~~
- 14. ~~The applicant's verification, under oath, that the information contained on the application is correct and complete, and the applicant's notarized signature.~~
- D.** ~~An applicant for a license to operate a school shall attach the following to the application required under subsection (C):~~
  - 1. ~~A current school catalog;~~

2. ~~A list of all courses offered at the school and the number of instructional hours devoted to each course, and~~
  3. ~~A copy of the bond in the amount required under A.R.S. § 32-325(C)(6).~~
- ~~E. Fee. In addition to the completed application required under subsections (C) and (D), an applicant shall submit to the Board the fee specified under R4-10-502(A)(5) for the licensing action requested under subsection (C)(1).~~

**R4-10-802. Notification of Changes Renumbered**

~~The holder of a license to operate a school shall send written notice and updated information to the Board within 15 days if the license holder:~~

1. ~~Amends the school catalog;~~
2. ~~Stops offering a course;~~
3. ~~Offers a new course;~~
4. ~~Changes the number of instructional hours devoted to a course listed under R4-10-801(D);~~
5. ~~Changes the hours during which instruction is provided;~~
6. ~~Changes the school name;~~
7. ~~Changes the school supervisor, or~~
8. ~~Establishes an offsite training facility in a shop under the provisions of R4-10-811.~~

**R4-10-803. Use of “Accredited,” “Approved,” or Similar Terms Repealed**

~~If “accredited,” “approved,” or a similar term appears in a school catalog or advertisement, the holder of the license to operate the school shall ensure that the catalog or advertisement includes the name of the accrediting or approving organization.~~

**R4-10-804. School Premises and Basic Equipment Repealed**

- ~~A. In addition to the requirements of A.R.S. § 32-325(C)(2) and (C)(3), the holder of a license to operate a school shall ensure that the school has at least the following:~~
1. ~~An instructor, licensed in Arizona, to teach each required course;~~
  2. ~~Instructional furnishings and fixtures for instructor and student use;~~
  3. ~~A workstation for each student scheduled for practical instruction;~~
  4. ~~Filing cabinets for school and student records;~~

5. ~~Chalkboards or other writing boards;~~
  6. ~~A dispensary to prepare, mix, store, and dispose of supplies and chemicals used to disinfect barbering implements;~~
  7. ~~One latherizer for every five barber chairs;~~
  8. ~~One sink, with hot and cold running water, liquid or powder soap, and towels for every two barber chairs;~~
  9. ~~A student library that contains:~~
    - a. ~~A dictionary;~~
    - b. ~~Current barbering manuals and textbooks;~~
    - c. ~~A current copy of A.R.S. Title 32, Chapter 3; and~~
    - d. ~~A current copy of this Chapter;~~
  10. ~~A time clock; and~~
  11. ~~All equipment, implements, materials, and supplies necessary for student instruction.~~
- B.** ~~The holder of a license to operate a school shall ensure that each student workstation has at least the following:~~
1. ~~A barber chair;~~
  2. ~~A wall mirror located behind the barber chair;~~
  3. ~~A tool drawer that meets the standard in R4-10-501; and~~
  4. ~~One liquid sanitizer and one spray disinfectant.~~
- C.** ~~The holder of a license to operate a school shall ensure that each student at a workstation has access to the following:~~
1. ~~A covered receptacle for soiled towels and cloths;~~
  2. ~~A covered receptacle for garbage and hair; and~~
  3. ~~A sufficient supply of barbering products listed under R4-10-504(A)(3).~~

**R4-10-805. School Operations Renumbered**

- A.** ~~The holder of a license to operate a school shall file the school's operating schedule with the Board before the first scheduled class begins.~~
- B.** ~~The holder of a license to operate a school shall ensure that all equipment provided under this Chapter is of sufficient quality to meet the educational needs of students and maintained in good repair.~~

- ~~C. Unless a student who is studying barbering possesses the equipment listed under this subsection at the time of enrollment, the holder of a license to operate a school shall provide the student with a non-returnable training kit that includes the following equipment, all of which are new:~~
- ~~1. Course textbooks,~~
  - ~~2. One mannequin for barbering practice,~~
  - ~~3. Twelve combs and four brushes,~~
  - ~~4. One hair dryer,~~
  - ~~5. One straight razor with interchangeable blades,~~
  - ~~6. One pair of haircutting shears with at least six-inch blades,~~
  - ~~7. One pair of thinning shears,~~
  - ~~8. One clipper with interchangeable blades sizes 1 and .000 or an adjustable clipper,~~
  - ~~9. One neck duster, and~~
  - ~~10. One copy of the current statutes and rules governing the Board.~~
- ~~D. Trainee notices. At the time the holder of a license to operate a school enrolls a student, the license holder shall give Exhibit 1 or 2 to the student, as appropriate, and maintain the completed document for the time specified in R4-10-808(H).~~
- ~~E. An instructor trainee shall not teach students until the instructor trainee has received 40 instructional hours of training in methods of teaching. An instructor trainee shall complete all training in no more than six months.~~
- ~~F. An individual who is not an Arizona-licensed instructor shall not teach in a school but may demonstrate any process, product, or appliance to students when the individual is under the supervision of an Arizona-licensed instructor.~~
- ~~G. Within five days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:~~
- ~~1. A copy of the student's written application to attend the school containing the following:
    - ~~a. The student's name and address,~~
    - ~~b. The student's enrollment date,~~
    - ~~c. An indication regarding whether the student is enrolled in a barber or instructor course, and~~
    - ~~d. The student's signature, and~~~~
  - ~~2. Two photographs of the student that meet the standards specified in R4-10-602(A)(4).~~
- ~~H. Within 90 days after enrolling a student, the holder of a license to operate a school shall send the following to the Board:~~

1. ~~Proof that the student is at least 16 years old if enrolled in a barber course or at least 19 years old if enrolled in an instructor course;~~
  2. ~~Proof that the student has at least a tenth grade education if enrolled in a barber course or graduated from high school or its equivalent if enrolled in an instructor course; and~~
  3. ~~Documentation specified under A.R.S. § 41-1080(A) that the student's presence in the U.S. is authorized under federal law.~~
- ~~I. The Board shall use the information provided under subsection (G) to prepare and issue an educational card to a student. The holder of a license to operate a school shall ensure that a student:~~
1. ~~Displays the card at the student workstation, and~~
  2. ~~Returns the card to the Board upon completion of, or withdrawal from, the course.~~

**Exhibit 1. ~~Required Notice to a Barber Trainee~~ Repealed**

**NOTICE**

~~This Notice is required by the Arizona State Board of Barbers.~~

~~You have applied to this school for training that will qualify you to apply for a license to be a barber in Arizona. The Arizona State Board of Barbers will not issue you a license unless:~~

1. ~~You are at least 16 years of age when you apply for the license;~~
2. ~~You demonstrate to the Board that you have completed and received appropriate credits for at least two years of high school education or its equivalent, and~~
3. ~~You document that your presence in the U.S. is authorized under federal law.~~

~~It is your responsibility to make sure you meet the requirements of the Board of Barbers. If you are unsure about whether you meet the requirements, you should contact the Board of Barbers for further information.~~

**ACKNOWLEDGEMENT OF RECEIPT OF NOTICE**

~~I acknowledge that I received and understand the foregoing Notice.~~

~~(student signature and date)~~

**Exhibit 2. ~~Required Notice to an Instructor Trainee~~ Repealed**

## NOTICE

~~This Notice is required by the Arizona State Board of Barbers.~~

~~You have applied to this school for training that will qualify you to apply for a license to be a barber instructor in Arizona. The Arizona State Board of Barbers will not issue you a license unless:~~

- ~~1. You are at least 19 years of age when you apply for the license;~~
- ~~2. You demonstrate to the Board that you hold a high school diploma or its equivalent; and~~
- ~~3. You document that your presence in the U.S. is authorized under federal law.~~

~~It is your responsibility to make sure you meet the requirements of the Board of Barbers. If you are unsure about whether you meet the requirements, you should contact the Board of Barbers for further information.~~

## ACKNOWLEDGEMENT OF RECEIPT OF NOTICE

~~I acknowledge that I received and understand the foregoing Notice.~~

~~(student signature and date)~~

### **R4-10-806. Student Training and Supervision Repealed**

- ~~A. The holder of a license to operate a school shall ensure that students are graded at least monthly and informed of their grades and instructional hours completed.~~
- ~~B. A licensed instructor may assist students in the performance of barbering.~~
- ~~C. A student shall not dismiss a patron until a licensed instructor inspects and approves the student's work.~~
- ~~D. A student shall not attend a school for more than eight hours per day.~~
- ~~E. A student may receive a maximum of 20 instructional hours for field trips pertaining to barbering.~~
- ~~F. A student may receive up to 50 percent of the student's training at an offsite training facility operated under the provisions of R4-10-811.~~
- ~~G. A licensed instructor shall not ask a student to perform barbering on a patron while the student is engaged in classroom instruction or taking a written examination.~~
- ~~H. A student shall wear a name tag during school attendance that clearly identifies the student by name and student status.~~

### **R4-10-807. School Curriculum Renumbered**

- ~~A. The holder of a license to operate a school shall ensure that the barbering curriculum offered complies with A.R.S. § 32-325(B).~~
- ~~B. In addition to the minimum requirements under A.R.S. § 32-325(B)(1), the license holder shall include instruction in the following:
  - 1. Professional ethics;
  - 2. Shop management, and
  - 3. Regulatory provisions prescribed under A.R.S. Title 32, Chapter 3, and this Chapter.~~

**R4-10-808. School Records Repealed**

- ~~A. The holder of one license to operate a school shall keep a student's records at the student's enrollment location.~~
- ~~B. The holder of multiple licenses to operate multiple schools may keep a student's records at the student's enrollment location or a location that serves all the schools operated by the same license holder.~~
- ~~C. The holder of a license to operate a school shall at least weekly enter into each student's record the following:
  - 1. The date of the recorded entry;
  - 2. Each subject studied and the number of instructional hours for each subject;
  - 3. An indication whether instruction in a subject listed under subsection (C)(2) was classroom or practical, and
  - 4. The student's signature on a paper copy of the record to acknowledge accuracy of information in the record within three days after each record update.~~
- ~~D. The holder of a license to operate a school shall maintain a complete and accurate record file for each student that includes:
  - 1. The signed contract made between the student and the school;
  - 2. The student's current transcript;
  - 3. The applicable original notice required under R4-10-805(D), and
  - 4. Both the record created under subsection (C) and the student-signed paper copy of the record.~~
- ~~E. Within 15 days after the end of each month, the holder of a license to operate a school shall submit a report to the Board that includes:
  - 1. A list of each student who graduated during the month;
  - 2. The name and license number of:~~

- a. ~~The supervising instructor, and~~
  - b. ~~Each instructor providing classroom or practical instruction during the month;~~
  - 3. ~~A list of all students currently enrolled and:~~
    - a. ~~A list of total instructional hours earned by each student during the month;~~
    - b. ~~A list of each student's cumulative instructional hours; and~~
    - c. ~~A copy of the student-signed reports required under subsection (C)(4) and prepared during the month;~~
  - 4. ~~The name of any student who, during the month:~~
    - a. ~~Transferred to another school;~~
    - b. ~~Withdrew; or~~
    - c. ~~Took a leave of absence; and~~
  - 5. ~~The signature of the holder of the license to operate the school or the license holder's representative verifying that all information provided is correct and complete.~~
- F.** ~~If a student transfers from one school to another, the holder of the license to operate the school from which the student transferred shall:~~
- 1. ~~Make final entries to ensure the student's transcript is complete and accurate, and~~
  - 2. ~~Forward a copy of the student's transcript to the student and Board within three days after the student provides notice of transfer.~~
- G.** ~~When a student graduates or withdraws from a school, the holder of the license to operate the school shall:~~
- 1. ~~Complete a Student's Completion of Hours or Withdrawal form;~~
  - 2. ~~Certify the number of hours completed by the student;~~
  - 3. ~~Have the form notarized; and~~
  - 4. ~~Forward a copy of the form to the graduating or withdrawing student and the Board.~~
- H.** ~~The holder of a license to operate a school shall maintain the student record file required under subsection (D) permanently unless required under R4-10-809(E) to forward the records to the Board.~~

**R4-10-809. School Closure Repealed**

- A.** ~~The Board shall consider a school closed if the school fails for five consecutive school days to provide instruction in accordance with the operating schedule on file with the Board.~~
- B.** ~~Closure notification. The holder of the license to operate a school that is closing shall deliver written or oral notice of the school's closure to each currently enrolled student and the Board:~~

1. ~~Ten days before closure if the license holder can reasonably anticipate the school closure, or~~
  2. ~~Within five days after closure if the school's closure could not be reasonably anticipated by the license holder.~~
- ~~C. The holder of the license to operate a school that is closing shall ensure that the notice provided to currently enrolled students under subsection (B) includes the following information:~~
1. ~~When a full refund of paid tuition will be provided to the student,~~
  2. ~~How to make a claim against the bond required under A.R.S. § 32-325(C)(6) and R4-10-801(D)(3),~~
  3. ~~How to obtain a copy of the student's transcript and certification of hours completed,~~
  4. ~~How to obtain possession of the training kit provided under R4-10-805(C) and other personal possessions, and~~
  5. ~~How to access the student's records in the future.~~
- ~~D. The holder of the license to operate a school that is closing shall obtain a signed statement from each currently enrolled student verifying that the license holder complied with subsection (C).~~
- ~~E. Disposition of student records. The holder of the license to operate a school that is closing shall:~~
1. ~~Ensure that all student records are updated as required under R4-10-805(C) through the last day on which instruction was provided;~~
  2. ~~Forward all records for currently enrolled students to the Board within 10 days after the school closes; and~~
  3. ~~Forward to the Board a copy of all the signed statements required under subsection (D).~~

**R4-10-811. Offsite Training Facility Renumbered**

- ~~A. The holder of a license to operate a school may operate an offsite training facility in a shop that complies with the provisions of A.R.S. § 32-325(C) and R4-10-804(A)(11), R4-10-805(B), (E), and (F), and R4-10-806(B), (C), (D), (G), and (H).~~
- ~~B. In addition to subsection (A), a license holder operating an offsite training facility shall comply with the following:~~
1. ~~R4-10-804(A)(1), (3), (6), (7), (8), and (9) if only practical instruction is provided at the facility;~~  
~~or~~
  2. ~~Requirements of subsection (B)(1) and R4-10-804(A)(2) and (A)(5) if classroom instruction is provided at the facility.~~

~~C. In addition to the requirements of subsections (A) and (B), a license holder operating an offsite training facility shall:~~

- ~~1. Clearly indicate to the public the specific portion of the shop designated as an offsite training facility;~~
- ~~2. Post a sign indicating that barbering services at the offsite training facility are provided by students;~~
- ~~3. Require a student to give oral notice of status as a student to each patron, and~~
- ~~4. Restrict student barbering to the portion of the shop designated as an offsite training facility.~~

## **ARTICLE 9. HEARINGS Repealed**

### **R4-10-901. Hearing Procedures Repealed**

~~For purposes of A.R.S. § 32-354(D), the Board shall conduct all formal hearings according to A.R.S. Title 41, Chapter 6, Article 10.~~

### **R4-10-902. Rehearing and Review of Decision Repealed**

~~A. The Board shall provide for a rehearing and review of a decision under A.R.S. Title 41, Chapter 6, Article 10.~~

~~B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.~~

~~C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.~~

~~D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:~~

- ~~1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;~~
- ~~2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;~~
- ~~3. Accident or surprise that could not have been prevented by ordinary prudence;~~
- ~~4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;~~
- ~~5. Excessive penalty;~~
- ~~6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;~~

7. ~~The Board's decision is a result of passion or prejudice; or~~
8. ~~The findings of fact or decision is not justified by the evidence or is contrary to law.~~
- E.** ~~The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.~~
- F.** ~~If a motion for rehearing or review is based upon an affidavit, the affidavit shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days if the parties agree.~~
- G.** ~~Not later than 30 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.~~
- H.** ~~If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.~~
- I.** ~~If the Board makes a specific finding that a particular administrative decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final administrative decision without an opportunity for rehearing or review.~~

# **ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

## **TITLE 4. PROFESSIONS AND OCCUPATIONS**

### **CHAPTER 10. BARBERING AND COSMETOLOGY BOARD**

#### **1. Identification of the rulemaking:**

Under Laws 2021, Chapter 334, the legislature created the Barbering and Cosmetology Board (Board) and eliminated both the existing Boards of Cosmetology and Barbers. The legislature did not, however, combine the statutes regarding the two occupations. As required under A.R.S. § 41-2955(B), the legislature indicate the purpose of the consolidation was to ensure the public is protected from the incompetent practice of barbering and cosmetology by establishing minimum qualifications for entry into these disciplines and swift and effective discipline for practitioners who violate barbering or cosmetology statutes or rules. Under Laws 2021, Chapter 334, Section 34, the consolidation was effective on December 31, 2021.

Under Laws 2023, Chapter 18, the legislature added A.R.S. § 32-519, which created the position of eyelash technician and required eyelash technicians to register with the Board and pay a fee established by the Board. The statute also required an eyelash technician to complete a Board-approved training program.

Under Laws 2023, Chapter 20, the legislature amended A.R.S. §§ 32-532 and 32-557 regarding becoming a cosmetology, aesthetics, nail technology, or hairstyling instructor by reciprocity and allowing a student enrolled in a school for the purpose of becoming an instructor to be a paid employee of the school.

Under Laws 2023, Chapter 22, the legislature amended A.R.S. §§ 32-510, 32-512, and 32-512.01 to add aestheticians, nail technicians, and hairstylists as disciplines able to obtain required training through a U.S. Department of Labor or Department of Economic Security-approved apprenticeship program.

In this rulemaking, the Board makes the changes to existing cosmetology and barbering rules that are needed to comply with statutory changes. The Board also makes minor, non-substantive changes to clarify the rules. Some of these changes address issues identified

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

in 5YRRs approved by Council for the two previous boards in 2020. An exemption from Executive Order 2022-01 was provided for this rulemaking by Brian Norman, of the governor's office, in an e-mail dated October 24, 2022. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Hannah Johnson, of the governor's office, in an e-mail dated January 24, 2024.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is completed, the Board's rules will not be consistent with recent statutory changes and integration of rules applicable to the two previous boards will not be fulfilled.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government to have rules that are inconsistent with statute because the inconsistent rules cause confusion and create regulatory burdens.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is completed, the rules will be consistent with statute.

Integration of rules applicable to the two previous boards will be fulfilled.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The Board believes the economic impact of this rulemaking will be minimal because the only substantive changes made to existing rules are those required by statute. Individuals who choose to register as an eyelash technician and those who choose to provide training programs for eyelash technicians will be required to comply with procedures for registration and program approval and pay specified fees.

Changes having minimal positive economic impact or reducing regulatory burdens include:

- For business-entity applicants, reducing the number of officers, partners, or members required to submit an application;
- Clarifying the difference between crossover and transfer hours;
- Reducing the potential maximum fee for a cosmetologist to renew a delinquent personal license;
- Allowing use of plastic liners to maintain cleanliness of pedicure tubs;

- Reducing the amount of time a barbering instructor applicant has to have practiced barbering before applying to become an instructor;
- Clarifying that no license issued by the Board is transferrable;
- Allowing use of virtual learning for theory curriculum requirements.

Changes having minimal negative economic impact or adding small regulatory burdens include:

- Requiring all applications be submitted online;
- Reducing the amount of time for a school licensee to provide notice and updated information to the Board;
- Requiring the school licensee of a closing school to release student and employee belongings without request;
- Reducing the amount of time for the school licensee of a closing school to deliver student records to the Board;
- Clarifying information required for certificates of graduation and hours and requiring school licensees to provide the certificates to applicable students;

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Frank Migali, Executive Director

Address: 1740 W Adams Street, Suite 4400

Phoenix, AZ 85007

Telephone: 480-784-4539

E-mail: [azboard@bcb.az.gov](mailto:azboard@bcb.az.gov)

Web site: [bcb.az.gov](http://bcb.az.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees, applicants, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The Board licenses or registers individuals in seven disciplines: barber, aesthetician, cosmetologist, hair stylist, nail technician, eyelash technician, and instructor. The Board licenses individuals or business entities to operate a school or an establishment. The Board also approves eyelash technician training programs. On the advice of the Board's assistant attorney general, the Board is waiting until the rules are in effect to register eyelash

technicians and approve eyelash technician training programs. The number of current licensees by discipline is:

Barbers: 7,402

Aestheticians: 21,398

Cosmetologists: 51,820

Hair stylists: 1,010

Nail technicians: 17,926

Schools: 123

Establishments: 15,648

During the last year, the Board received 9,471 applications for an initial license and 21,318 applications for renewal. Of the renewal applications from a cosmetologist, aesthetician, hair stylist, or nail technician, 229 were renewing after being inactive for more than five years. During the last year, the Board, which has 22.5 FTEs, collected \$2,704,800 in fees and charges for services. The Board was appropriated \$2,864,800

Under Laws 2021, Chapter 334, which created the Board and eliminated the existing Boards of Barbering and Cosmetology, it became necessary to create one set of rules rather than two separate sets. In 2022, the Board re-codified rules of both the Barber and Cosmetology Boards into one Chapter. The recodification did not amend the rules or combine them so there were duplications and inconsistencies within the rules. This rulemaking combines the existing rules into one set of rules with a focus on maintaining only rule provisions necessary to protect public health and safety. Even though there are no substantive changes other than those required by statute, combining two sets of rules may present challenges to existing licensees who are used to doing things in a particular way. In particular, requiring all applications to be submitted electronically may be challenging for some. The rule changes also present a challenge to the Board, which has to amend application forms and licensing procedures.

One of the goals of the legislature when it created the Barbering and Cosmetology Board was swift and effective discipline for practitioners who violate statutes or rules. During the last year, the Board received 555 complaints regarding licensees. The complaints frequently alleged unlicensed activity and unsanitary conditions. Of the complaints received, 251 went

before the Board and 39 licensees were disciplined. The discipline imposed included a non-disciplinary letter or concern, a disciplinary letter of concern, and civil penalties.

During the last year, two schools for which a license to operate had been issued, closed. Some of the provisions in this rulemaking require the licensee of a closing school to act more quickly to protect the interests and property of students and employees. This minor regulatory burden is designed to protect the public.

The Board has not started to register eyelash technicians or approve eyelash technician training programs under the recent statutory change. However, currently licensed cosmetologists and aestheticians may engage in eyelash technology. The Board believes there will be high demand from individuals seeking to register as an eyelash technician or offer an approved eyelash technician training program. The Board anticipates that at least 2,500 individuals will register as an eyelash technician and 75 persons will seek approval of an eyelash technician training program in the first year.

The primary economic impact of this rulemaking is on the Board, which has to pay to complete and implement the rulemaking, modify all application forms, modify licensing procedures, and ensure Board employees are trained in the new procedures. The Board has the benefit of having rules that comply with statute.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. The Board's costs and benefits are described in item 4. The Board will not need additional full-time employees to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Licensees and registrants, schools, approved eyelash technician training programs, and establishments are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

a. Identification of the small business subject to the rulemaking:

Licenses and registrants, schools, approved eyelash technician training programs, and establishments are small businesses subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

All persons subject to the rulemaking are required to apply to the Board for a license, registration, or approval, pay the specified fee, and renew the license, registration, or approval when specified. Those licensed, registered, or approved by the Board are required to comply with all statutes and rules. The rules, which are designed to protect public health and safety, include requirements regarding infect control and safety, equipment necessary to provide the services for which a license was issued, and curriculum and operational standards for schools.

c. Description of methods that may be used to reduce the impact on small businesses:

The Board believes all those subject to the rulemaking are small businesses. As a result, it is not possible to reduce the already minimal impact of the rulemaking on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The rulemaking will not directly affect private persons or consumers.

9. Probable effects on state revenues:

There will be a small increase in state revenues resulting from new fees to register as an eyelash technician, obtain approval of an eyelash technician training program, and renew the registration. If the Board's estimate in item 4 is correct, the Board will collect \$131,250 during the first year from registering eyelash technicians and approving eyelash technician training programs. Ten percent of this will go to the state's general fund.

The 229 cosmetologists, aestheticians, hair stylists, and nail technologists who renewed their personal license after it was inactive for more than five years would have saved as much as \$60 each under the amended rules. This would produce a small decreased in state revenues.

10. Less intrusive or less costly alternative methods considered:

Because the rules are neither intrusive nor costly, the Board did not consider an alternative method.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(23).



As of January 25, 2024

### 32-301. Definitions

In this chapter, unless the context otherwise requires:

1. "Barber" means a person who is licensed to practice barbering by the board.
2. "Barbering" means any one or a combination of the following practices if they are performed on a person's head, face, neck or shoulders for cosmetic purposes:
  - (a) Cutting, clipping or trimming hair.
  - (b) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
  - (c) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.
  - (d) Providing hair attachments, extensions, hairpieces and wigs when performed by a barber.
  - (e) Shaving or trimming a beard.
  - (f) Providing skin care.
3. "Board" means the barbering and cosmetology board.
4. "Instructor" means a person who is licensed to teach barbering pursuant to this chapter.
5. "Mentor" means a barber who is approved by the board to train a person in a department of economic security-approved apprenticeship program in barbering in an establishment that is licensed by the board.
6. "School" means an establishment that is operated for the purpose of teaching barbering or cosmetology.
7. "Shop" or "salon" means an establishment that is operated for the purpose of engaging in the practice of barbering.

### 32-304. Powers and duties

A. The board shall:

1. Make and adopt rules that are necessary or proper to administer this chapter, including sanitary and safety requirements for schools and shops or salons, sanitary and safety standards for the practice of barbering and mobile unit requirements.
  2. Administer and enforce this chapter and rules adopted pursuant to this chapter.
  3. Maintain a record of its acts and proceedings, including issuance, refusal, renewal, suspension and revocation of licenses, and a record of the name, address and license date of each licensee.
  4. Keep the records of the board open to public inspection at all reasonable times.
  5. Furnish a copy of its rules to a barber or to the owner or manager of each shop or salon on request.
  6. Have a seal, the imprint of which is used to evidence its official acts.
  7. Prescribe minimum school curriculum requirements.
  8. Approve a barber as a mentor based on the barber's record of compliance with this chapter. The board may not condition the approval on the barber's payment of an additional fee or completion of an additional requirement.
- B. The board may inspect the premises of any school, shop or salon during business hours.

### **32-321. Nonapplicability of chapter**

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Medical practitioners licensed pursuant to this title who treat physical or mental ailments or disease.
2. Persons who perform services without compensation in case of emergency or in domestic administration.
3. Commissioned physicians and surgeons serving in the armed forces of the United States or other federal agencies.
4. Students attending schools licensed by the board while they are on school premises during school hours or off campus at a school-sponsored event.
5. Persons who are licensed pursuant to chapter 5 of this title or who work in a profession regulated under chapter 12 of this title.

6. Shampoo assistants who shampoo hair under the direction of a barber licensed pursuant to this chapter.
7. Persons who are in the custody of the state department of corrections and who perform services for persons in the custody of the state department of corrections.
8. Persons who are participating in a department of economic security-approved apprenticeship program in barbering as described in section 32-322 while working with a mentor in an establishment that is licensed by the board.
9. Persons who are licensed in another state, who are in this state for not more than two weeks and who provide services for persons who are attending an athletic, charitable, artistic or social event in this state.

**32-322. Barber license; application; qualifications**

A. An applicant for a barber license shall file the following with the board:

1. A written application on a form prescribed by the board.
2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.
3. One signed photograph.

B. Each applicant shall:

1. Be at least sixteen years of age.
2. Complete and receive appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submit satisfactory evidence that the person is at least sixteen years of age.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Either:
  - (a) Be a graduate of a school that is licensed pursuant to this chapter or a graduate of a school or program in another state that at the time of the applicant's graduation met the barber licensing requirements of that state.
  - (b) Complete a United States department of labor-approved or a department of economic security-approved apprenticeship program in barbering that includes at least two hundred fifty hours of instruction as described in section 32-325, subsection B,

paragraph 1. The instruction prescribed by this subdivision shall be completed through either:

(i) A school that is licensed pursuant to this chapter or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.

(ii) A department of economic security-approved apprenticeship program.

C. An applicant who holds a valid license to practice barbering issued by another state is exempt from subsection B, paragraph 3 of this section if the applicant submits both of the following to the board:

1. Proof that the applicant has one year of experience as a barber.

2. A document signed by the applicant stating that the applicant has read and understands the laws prescribed by this chapter.

D. An applicant who holds a valid license or authorizing document to practice barbering issued by another country and whose presence in the United States is authorized under federal law is exempt from subsection B, paragraph 5 of this section if all of the following apply:

1. The board determines that the applicant is proficient in barbering.

2. The applicant completes at least three hundred fifty hours of education at a school or program that is licensed pursuant to this chapter.

3. The applicant signs a document stating that the applicant has read and understands the requirements of this chapter.

E. Notwithstanding subsection B, paragraph 5 of this section, an applicant for a barber license who holds a cosmetologist license or a hairstylist license issued pursuant to chapter 5 of this title shall complete a two hundred-hour course consisting of barbering techniques in a school licensed by the board.

### 32-323. Instructor license; application; qualifications

A. An applicant for an instructor license shall file the following with the board:

1. A written application on a form prescribed by the board.

2. Evidence satisfactory to the board that the applicant possesses the necessary qualifications.

B. An applicant shall:

1. Be at least nineteen years of age.
2. Hold a diploma from a high school or its equivalent as prescribed by the board in its rules.
3. Pass an examination given under the direction of the board.
4. Pay the prescribed fees.
5. Have practiced barbering for at least two years.

C. An applicant who holds a valid instructor's license to instruct barber students issued by another state which has, in the opinion of the board, licensure requirements which are substantially equivalent to the requirements of this state and which grants similar reciprocal privileges to barbers licensed by this state and who has at least one year's experience as a licensed instructor is exempt from subsection B, paragraph 3.

### 32-324. Examinations

A. The board or a national professional organization for barbering selected by the board shall administer written and practical examinations for a barber or instructor license. The examinations shall test for requisite knowledge and skills in the technical application of barbering services. An applicant may take an examination before the applicant has completed the required hours of course instruction prescribed by this article, but the applicant must complete the required hours of course instruction before licensure.

B. The board or a national professional organization for barbering selected by the board shall inform each applicant of the examination results.

C. The board shall make an accurate record of each examination.

### 32-325. School license; application; qualifications

A. An applicant for a license to operate a school shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.

B. A course of instruction in a licensed school that teaches barbering shall consist of at least one thousand two hundred hours of instruction of not more than eight hours in any one working day. The course of instruction shall include:

1. At least two hundred fifty hours devoted to the study of the fundamentals of barbering, hygiene, bacteriology, histology of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics and diseases of the skin, hair and glands.

2. At least nine hundred fifty hours devoted to the practice and study of massaging and manipulating muscles of the scalp, face and neck, hair cutting, shaving and chemical work relating to permanent waves and hair straightening, coloring and bleaching.

C. A licensed school shall:

1. Be operated under the general supervision of a licensed instructor.

2. Have and maintain sufficient equipment to properly train all its students in the use, function and operation of equipment that is at the time in use in barbering.

3. Provide:

(a) Separate lecture rooms or classrooms.

(b) Locker spaces for students.

(c) An area appropriate in size for placing the training equipment.

4. Require that a student pass examinations in all phases of barbering before graduating.

5. Pass an inspection by the board before a school license is issued.

6. Furnish to the board and maintain in force a bond in the sum of \$25,000 that is approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of this state for failure to comply with the requirements of this chapter and conditioned that the school licensed pursuant to this chapter affords to its students the full course of instruction required pursuant to this chapter, in default of which the full amount of the tuition paid by the student shall be refunded.

D. Instructors shall not apply their time to private practice with or without compensation in a school or during school hours.

E. Students shall not teach other students.

F. Students shall be under the constant supervision of an instructor.

G. A school may offer courses on both cosmetology and barbering if an instructor licensed pursuant to chapter 5 of this title teaches the cosmetology courses and an instructor licensed pursuant to this chapter teaches the barbering courses.

[32-326. Shop or salon license; application; qualifications](#)

A. An applicant for a license to operate a shop or salon shall file a written application on a form prescribed by the board. The application shall be under oath and accompanied by the prescribed fee.

B. An applicant shall:

1. Comply with the rules of the board concerning health, safety and sanitation.
2. Comply with the applicable health and safety laws and rules of other state agencies and political subdivisions.
3. Pay the prescribed fee.

C. A shop or salon licensed pursuant to this chapter shall be under the direct supervision of a barber.

### 32-327. License expiration and renewal

A. Except as provided in section 32-4301, a barber or instructor license expires every two years on the licensee's birth date, unless it is renewed within thirty days before the licensee's birth date by payment of the prescribed renewal fee and compliance with other requirements for renewal.

B. Except as provided in section 32-4301, a school or shop or salon license expires June 30 each year, unless it is renewed within thirty days before its expiration date by payment of the prescribed renewal fee and compliance with other requirements for renewal.

C. A barber or instructor license which is not renewed before it expires may be renewed within five years after its expiration by payment of the prescribed renewal fee and late renewal fee for each year the license is expired and compliance with other requirements for renewal.

D. Any license paid for with an insufficient funds check is deemed null and void until such time as a certified check, money order or cash is tendered as payment for the license.

### 32-328. Fees; penalty

A. The board shall establish and collect fees, not to exceed the following amounts:

1. Barber examination, two hundred dollars.
2. Barber license, one hundred dollars.
3. Barber license by reciprocity, two hundred dollars.

4. Barber license renewal fee, one hundred dollars.
5. Barber late renewal fee, one hundred fifty dollars.
6. Instructor examination, two hundred dollars.
7. Instructor license, one hundred dollars.
8. Instructor license renewal fee, one hundred dollars.
9. Instructor late renewal fee, one hundred fifty dollars.
10. Application for school license and initial inspection fee, one thousand dollars.
11. School license after change of location, five hundred dollars.
12. School license after change of ownership, five hundred dollars.
13. School license renewal fee, five hundred dollars.
14. School late renewal fee, five hundred fifty dollars.
15. Application for shop or salon license and initial inspection fee, two hundred fifty dollars.
16. Shop or salon license after change of location, two hundred dollars.
17. Shop or salon license after change of ownership, one hundred fifty dollars.
18. Shop or salon license renewal fee, one hundred dollars.
19. Shop or salon late renewal fee, one hundred fifty dollars.
20. Practical reexamination, fifty dollars.
21. Written reexamination, twenty-five dollars.

B. A duplicate license shall be issued to replace a lost license if a licensee files a verified statement as to its loss and pays a twenty dollar fee. Each duplicate license issued shall have the word "duplicate" stamped across the face.

C. If the board receives an insufficient funds check, it may charge a ten dollar penalty fee.

**32-329. Schools; postsecondary educational institutions**

A school shall be recognized as a postsecondary educational institution if both of the following apply:

1. The school admits as regular students only individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma or who are beyond the age of compulsory education as provided by section 15-802.
2. The school is licensed by name by the board under this chapter to offer one or more training programs beyond the secondary school level.

### 32-351. Display of license

A. Barbers and holders of shop licenses shall display their licenses in a conspicuous place within the shop.

B. Instructors and holders of school licenses shall display their licenses in a conspicuous place within the school.

### 32-352. Disciplinary action

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license.
2. Suspend a license.
3. Impose a civil penalty in an amount not to exceed five hundred dollars.
4. Impose probation requirements best adapted to protect the public safety, health and welfare including requirements for restitution payments to patrons.
5. Publicly reprove a licensee.
6. Issue a letter of concern.

### 32-353. Grounds for refusal to issue or renew a license or disciplinary action

The board may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Continued performance of barbering by a person knowingly having an infectious or communicable disease.
2. Malpractice or incompetency.
3. Advertising by means of known false or deceptive statements.
4. Advertising, practicing or attempting to practice under a trade name other than the one in which the license is issued.
5. Violating any provision of this chapter or any rule adopted pursuant to this chapter.

6. Making false statements to the board.

32-354. Procedure for disciplinary action; appeal

A. The board on its own motion may investigate any information which appears to show the existence of any of the causes set forth in section 32-353. The board shall investigate the report of any person which appears to show the existence of any of the causes set forth in section 32-353. A person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.

B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license, it may take either of the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.

2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the information or report being made to the board may result in action against his license.

C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview.

D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. If, after an informal interview, the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license issued pursuant to this chapter, imposition of a civil penalty or public reproof it may take the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.

2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license there is sufficient evidence for the board to notify the licensee that continuation of the activities which led to the

information or report being made to the board may result in action against the licensee's license.

3. Impose probation requirements.

F. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-355. Unlawful acts; violation; classification

A. A person shall not:

1. Practice or attempt to practice barbering without a current barber license issued pursuant to this chapter.

2. Practice or teach in or operate a school or operate a shop or salon which does not have a current license issued pursuant to this chapter.

3. Operate a shop or salon unless it is under the direct supervision of a barber.

4. Display a sign or in any way advertise or hold oneself out as a barber or as being engaged in the practice or business of barbering without being licensed pursuant to this chapter.

5. Knowingly make a false statement on an application for a license pursuant to this chapter.

6. Permit an employee or another person under his supervision or control to practice barbering without a license issued pursuant to this chapter.

7. Practice barbering in any place other than in a shop or salon licensed pursuant to this chapter unless he is requested by a customer to go to a place other than a shop or salon licensed pursuant to this chapter and is sent to the customer from the shop or salon.

8. Obtain or attempt to obtain a license by the use of money other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.

9. Violate any provision of this chapter or any rule adopted pursuant to this chapter.

B. An instructor shall not render barbering services in a school unless the services are directly incidental to the instruction of students.

C. A school shall clearly indicate to the public that all services are performed by students under the direct supervision of an instructor.

D. A person who violates this section is guilty of a class 1 misdemeanor.

### 32-356. Injunctions

The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

As of January 25, 2024

32-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Aesthetician":

- (a) Means a person who is licensed to practice skin care pursuant to this chapter.
- (b) Does not include an eyelash technician.

2. "Aesthetics" means any one or a combination of the following practices if they are performed for cosmetic purposes:

- (a) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
- (b) Arching eyebrows or tinting eyebrows and eyelashes.
- (c) Removing superfluous hair by means other than electrolysis or threading.

3. "Barbering" has the same meaning prescribed in section 32-301.

4. "Board" means the barbering and cosmetology board.

5. "Cosmetic purposes" means for the purpose of beautifying, preserving or conferring comeliness, excluding therapeutic massage and manipulations.

6. "Cosmetologist" means a person who is licensed to practice cosmetology pursuant to this chapter.

7. "Cosmetology":

(a) Means any one or a combination of the following practices if they are performed for cosmetic purposes:

- (i) Massaging, cleansing, stimulating, manipulating, exercising, beautifying or applying oils, creams, antiseptics, clays, lotions or other preparations, either by hand or by mechanical or electrical appliances.
- (ii) Arching eyebrows or tinting eyebrows and eyelashes.
- (iii) Removing superfluous hair by means other than electrolysis or threading.
- (iv) Nail technology.

(v) Hairstyling.

(b) Does not include performing personal services related to eyelash extensions.

8. "Electrical appliances" means devices that use electrical current and includes lasers and IPL devices as defined in section 32-516.

9. "Eyelash extensions":

(a) Means applying, removing and trimming threadlike natural or synthetic fibers to an eyelash.

(b) Includes cleansing the eye area and lashes.

(c) Does not include applying eyelash enhancements that are tattoos, color agents, straightening agents, permanent wave solutions or bleaching agents to the eyebrow or any other cosmetology service.

10. "Eyelash technician" means a person who is not licensed as a cosmetologist or aesthetician and who for compensation performs personal services limited to eyelash extensions.

11. "Hairstyling" means any of the following:

(a) Cutting, clipping or trimming hair.

(b) Styling, arranging, dressing, curling, waving, permanent waving, straightening, cleansing, singeing, bleaching, dyeing, tinting, coloring or similarly treating hair.

(c) Removing superfluous hair from the neck up by means other than electrolysis or threading.

12. "Hairstylist" means a person who is licensed to practice hairstyling pursuant to this chapter.

13. "Instructor" means a person who is licensed to teach cosmetology, aesthetics, nail technology or hairstyling, or any combination thereof, pursuant to this chapter.

14. "Mentor" means a cosmetologist who is approved by the board to train a person in a department of economic security-approved apprenticeship program in cosmetology in an establishment that is licensed by the board.

15. "Nail technician" means a person who is licensed to practice nail technology pursuant to this chapter.

16. "Nail technology" means any of the following:

(a) Cutting, trimming, polishing, coloring, tinting, cleansing or otherwise treating a person's nails.

(b) Applying artificial nails.

(c) Massaging and cleaning a person's hands, arms, legs and feet.

17. "Salon" means any of the following:

(a) An establishment that is operated for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices.

(b) An establishment together with a retrofitted motor vehicle for exclusive use as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices, that is operated and dispatched through the establishment.

(c) A retrofitted motor vehicle that is exclusively used as a mobile facility for the purpose of engaging in the practice of cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices, and that is operated and dispatched from a business that has a physical street address on file with the board.

18. "School" means an establishment that is operated for the purpose of teaching barbering, cosmetology, aesthetics, nail technology or hairstyling, or any combination of the listed practices.

19. "Threading" means a service that results in the removal of hair from its follicle from around the eyebrows and from other parts of the face with the use of a single strand of cotton thread and an over-the-counter astringent, if the service does not use chemicals of any kind, wax or any implements, instruments or tools to remove hair.

[32-502. Barbering and cosmetology board; members; appointment; qualifications; terms](#)

A. The barbering and cosmetology board is established consisting of the following members who are appointed by the governor:

1. One cosmetologist who has actively practiced cosmetology in this state for at least three years immediately preceding appointment.

2. Two school owners who do not own the same school, one of whom owns a school that teaches cosmetology and one of whom owns a school that teaches barbering.

3. Five public members, preferably one of whom is an educator, who are not and have never been associated with the barbering, cosmetology or nail technology industry,

licensed as a barber, cosmetologist or nail technician or involved in manufacturing barbering, cosmetology or nail technology products.

4. One barber who has actively practiced barbering in this state for at least three years.

B. The term of office for members is three years beginning and ending June 22.

C. The governor may remove board members for neglect of duty, malfeasance or misfeasance.

**32-503. Organization; meetings; personnel; compensation**

A. The board shall annually elect a chairman, vice chairman and secretary-treasurer from among its membership.

B. The board shall hold at least one regular meeting monthly and may hold other meetings at times and places it designates.

C. Subject to title 41, chapter 4, article 4, the board may employ the following personnel as it deems necessary to carry out the purposes of this chapter and chapter 3 of this title and designate their duties:

1. An executive director.

2. A supervisor of examinations who is an instructor licensed pursuant to this chapter or chapter 3 of this title and who has worked at least two of the five years immediately preceding employment as an instructor in a school licensed pursuant to this chapter.

3. Examiners who are not employed as instructors in any school licensed pursuant to this chapter or chapter 3 of this title.

4. Persons to provide investigative, professional and clerical assistance.

5. Consultants to assist the board in performing its duties.

6. Other personnel.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day of actual service in the business of the board. The board shall compensate its executive director and other personnel as determined pursuant to section 38-611.

**32-504. Powers and duties**

A. The board shall:

1. Adopt rules that are necessary and proper for the administration of this chapter, including sanitary and safety requirements for salons and schools and sanitary and safety standards for the practice of cosmetology, aesthetics, nail technology and hairstyling.
2. Administer and enforce this chapter and rules adopted pursuant to this chapter.
3. Either prepare, administer and grade practical and written examinations or contract with a national professional organization for cosmetology selected by the board to prepare, administer and grade practical and written examinations.
4. Make and maintain a record of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and public reproofs of licensees.
5. Evidence its official acts by the signature of the chairman or vice chairman of the board or a representative designated by the board.
6. Keep records of the board open to public inspection at all reasonable times.
7. Make an annual report to the governor on or before October 1 of each year covering its official acts and financial transactions during the preceding fiscal year and making recommendations it deems necessary.
8. Prescribe minimum school curriculum requirements for cosmetologists, aestheticians, nail technicians, hairstylists and instructors.
9. Prescribe standards and requirements for the provision of salon services through mobile units and in customer locations.
10. Approve a cosmetologist as a mentor based on the cosmetologist's record of compliance with this chapter. The board may not condition the approval on the cosmetologist's payment of an additional fee or completion of an additional requirement.

B. The board may:

1. Inspect the premises of any salon or school during business hours.
2. Delegate authority to its executive director to issue licenses and registrations to applicants who meet the requirements of this chapter.

### 32-505. Barbering and cosmetology fund

A. The barbering and cosmetology fund is established. Except as provided in subsection C of this section, before the end of each calendar month the board shall deposit, pursuant to sections 35-146 and 35-147, ten percent of all monies from

whatever source that come into the possession of the board in the state general fund and deposit the remaining ninety percent in the barbering and cosmetology fund.

B. Except as provided in section 32-573, subsection G, monies deposited in the barbering and cosmetology fund are subject to section 35-143.01.

C. Monies from civil penalties received pursuant to section 32-571 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### 32-506. Nonapplicability of chapter

This chapter does not apply to the following persons while in the proper discharge of their professional duties:

1. Medical practitioners who are licensed pursuant to this title if the practices treat physical or mental ailments or disease.
2. Commissioned physicians and surgeons who are serving in the armed forces of the United States or other federal agencies.
3. Persons who are licensed pursuant to chapter 3 of this title or who work in a profession that is regulated under chapter 12 of this title.
4. Students who are attending schools licensed by the board while they are on school premises during school hours or off campus at a school-sponsored event.
5. Persons employed by theatrical groups who apply makeup, oils and cosmetics.
6. Persons who sell makeup, oils and cosmetics and who apply such products during the process of selling such products.
7. Shampoo assistants who shampoo hair under the direction of a cosmetologist or hairstylist licensed pursuant to this chapter.
8. Services performed by and for persons who are in the custody of the state department of corrections.
9. Persons who apply makeup, oils and cosmetics to patients in a hospital, nursing home or residential care institution with the consent of the patient and the hospital, nursing home or residential care institution.
10. Persons who provide a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking or braiding if the service does not include the application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl or alter the structure of the hair.
11. Persons who provide threading.

12. Persons who provide tanning services by means of airbrushing, tanning beds or spray tanning.

13. Persons who apply makeup, including eyelash enhancements. This paragraph does not apply if a person is engaging in the practice of aesthetics or cosmetology. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the board.

14. Persons who dry, style, arrange, dress, curl, hot iron or shampoo and condition hair if the service does not include applying reactive chemicals to permanently straighten, curl or alter the structure of the hair and if the person takes and completes a class relating to sanitation, infection protection and law review that is provided by the board or its designee. This paragraph does not apply if a person is engaging in the practice of aesthetics or cosmetology. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the board.

15. Persons who are participating in a department of economic security-approved apprenticeship program as described in section 32-510, 32-511, 32-512 or 32-512.01 while working with a mentor in an establishment that is licensed by the board.

16. Persons who are licensed in another state and who are working in this state at a charitable event that benefits a nonprofit organization.

17. Persons who are licensed in another state, who are in this state for not more than two weeks and who provide services for persons who are attending an athletic, charitable, artistic or social event in this state.

18. Persons who are enrolled in a school that is licensed by the board and who shampoo, rinse and apply cream rinse, conditioners and reconstructors to hair, including hair that has been treated with color or bleach.

### **32-507. Fees**

A. The board shall establish and collect fees not to exceed the following:

1. Written examination, \$100.
2. Practical examination, \$100.
3. Application for initial personal license, a onetime fee of \$83.
4. Application for personal reciprocity license, a onetime fee of \$150.
5. Application for salon license, \$112.

6. Application for school license, \$600.
7. Application for certification of licensure or hours, \$30.
8. Personal license renewal, \$76 to be paid once every two years pursuant to section 32-517 or 32-535.
9. Personal license delinquent renewal, \$60.
10. Salon license renewal, \$50.
11. Salon license delinquent renewal, \$80.
12. School license renewal, \$500.
13. School license delinquent renewal, \$600.
14. Delinquent penalties for each year or portion of a year for which the license was inactive.
15. Computer printouts of names of licensees, \$.25 per name.
16. Duplicate license, \$30.
17. Dishonored checks, \$20.
18. Copying charges, \$1 per page. For audiotapes, videotapes, computer discs or other mediums used for recording sounds, images or information, \$15 per tape, disc or other medium.
19. Board-administered educational classes, \$100.
20. Review of examination, \$50.
21. Regrading of examinations, \$25.
22. Service charges for persons who pay with alternative payment methods, including credit cards, charge cards, debit cards and electronic transfers, not to exceed the cost of the alternative payment method.
23. Eyelash technician registration, an amount to be determined by the board.
24. Eyelash technician registration renewal, an amount to be determined by the board.
25. Eyelash technician registration delinquent renewal, an amount to be determined by the board.

B. The board may charge additional fees for:

1. Documents and publications provided by the board.
  2. Services that the board deems appropriate to carry out its intent and purpose. These additional fees shall not exceed the costs of rendering the services.
- C. The board shall only issue a duplicate license on receipt of a written request that states the reason for the request for a duplicate license.

**32-510. Aestheticians; applications; qualifications**

A person is entitled to receive an aesthetician's license if the person:

1. Submits to the board an application for an aesthetician's license on a form supplied by the board.
2. Does either of the following:
  - (a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.
  - (b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.
3. Submits to the board satisfactory evidence of any of the following:
  - (a) That the person is a graduate of an aesthetician school in another state or country that has substantially the same requirements as this state for schools licensed by the board.
  - (b) That the person is a graduate of an aesthetician course consisting of at least six hundred hours of training in a school licensed by the board.
  - (c) That the person completed a United States department of labor-approved or a department of economic security-approved apprenticeship program in aesthetics that includes at least two hundred hours of infection protection and law review instruction. The person shall complete the instruction prescribed by this subdivision through either:
    - (i) A school that is licensed by the board or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.
    - (ii) A department of economic security-approved apprenticeship program.
4. Passes the examination for an aesthetician's license.

5. Pays the prescribed fees for an aesthetician's license.

### 32-511. Cosmetologists; applications; qualifications

A person is entitled to receive a cosmetologist license if the person does all of the following:

1. Submits to the board an application for a cosmetologist license on a form supplied by the board.

2. Does either of the following:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence of any of the following:

(a) That the person is a graduate of a cosmetology course consisting of at least one thousand five hundred hours of training in a school licensed by the board.

(b) That the person is a graduate of a cosmetology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed by the board.

(c) That the person completed a United States department of labor-approved or a department of economic security-approved apprenticeship program in cosmetology that includes at least two hundred fifty hours of infection protection and law review instruction. The person shall complete the instruction prescribed by this subdivision through either:

(i) A school that is licensed pursuant to this chapter or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.

(ii) A department of economic security-approved apprenticeship program.

4. Passes the examination for a cosmetologist license.

5. Pays the prescribed fees.

### 32-512. Nail technicians; applications; qualifications

A person is entitled to receive a license to practice nail technology if the person does all of the following:

1. Submits to the board an application for a nail technician license on a form supplied by the board.
2. Does either of the following:
  - (a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.
  - (b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.
3. Submits to the board satisfactory evidence of any of the following:
  - (a) That the person graduated from a nail technology school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed by the board.
  - (b) That the person completed a nail technician course consisting of at least six hundred hours of training in a school licensed by the board.
  - (c) That the person completed a United States department of labor-approved or a department of economic security-approved apprenticeship program in nail technology that includes at least one hundred fifty hours of infection protection and law review instruction. The person shall complete the instruction prescribed by this subdivision through either:
    - (i) A school that is licensed by the board or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.
    - (ii) A department of economic security-approved apprenticeship program.
4. Pays the prescribed fees for a nail technician license.
5. Passes the examination for a nail technician license.

**32-512.01. Hairstylists; applications; qualifications**

A person is entitled to receive a license to practice hairstyling if the person does all of the following:

1. Submits to the board an application for a hairstylist license on a form supplied by the board.

2. Either:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence that the person meets any of the following:

(a) Graduated from a hairstyling school in another state or country that had at the time of the person's graduation substantially the same requirements as this state for schools licensed by the board.

(b) Completed a hairstylist course consisting of at least one thousand hours of training in a school licensed by the board.

(c) Completed a United States department of labor-approved or a department of economic security-approved apprenticeship program in hairstyling that includes at least two hundred hours of infection protection and law review instruction. The person shall complete the instruction prescribed by this subdivision through either:

(i) A school that is licensed by the board or a school or program in another state that has, in the board's opinion, licensure requirements that are substantially equivalent to the requirements of this state.

(ii) A department of economic security-approved apprenticeship program.

4. Pays the prescribed fees for a hairstylist license.

5. Passes the examination for a hairstylist license.

### 32-513. Reciprocity

Notwithstanding sections 32-510, 32-511, 32-512 and 32-512.01, a person is entitled to receive a cosmetologist, aesthetician, nail technician or hairstylist license if the person does all of the following:

1. Submits to the board an application for a cosmetologist, aesthetician, nail technician or hairstylist license on a form supplied by the board.

2. Submits to the board satisfactory evidence that the person is licensed in another state or country.

3. Takes and completes a class relating to infection protection and law review that is provided by the board or its designee. The board shall determine the amount of the fees for the class. The applicant shall pay the fees directly to the board or its designee.
4. Pays the prescribed reciprocity license fees.

#### 32-514. Examinations

- A. The board or a national professional organization for cosmetology selected by the board shall administer written and practical examinations for a cosmetologist, aesthetician, nail technician, hairstylist or instructor license. The examinations shall test for requisite knowledge and skills in the technical application of cosmetology services. An applicant may take an examination before the applicant has completed the required hours of course instruction prescribed by this article, but the applicant must complete the required hours of course instruction before licensure.
- B. The board or a national professional organization for cosmetology selected by the board shall inform each applicant of the examination results.
- C. The board shall make an accurate record of each examination.

#### 32-515. Reexaminations

- A. An applicant who fails an examination for a license pursuant to this article is entitled to a reexamination.
- B. If an applicant fails either part of the examination, the applicant shall only retake the part of the examination that the applicant failed.
- C. If one year or more elapses between an applicant's initial examination and reexamination, the applicant shall take both the written and practical parts of the examination.
- D. An applicant desiring to be reexamined shall:
  1. Apply to the board, if the board is administering the examination, on forms it prescribes and furnishes or to a national professional organization selected by the board to administer the examination.
  2. Pay the prescribed examination fee.

#### 32-516. Aestheticians; cosmetologists; cosmetic laser and IPL device use; certification; fees; definitions

- A. An aesthetician or a cosmetologist who wishes to perform cosmetic laser procedures and procedures using IPL devices must:

1. Apply for and receive a certificate from the department.
  2. Comply with the requirements of this section and department rules.
  3. Successfully complete forty hours of didactic training as required by department rules at a department-certified training program. The program shall provide a provisional certificate to the applicant verifying the successful completion of the didactic training.
  4. For hair removal, complete hands-on training that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.
  5. For other cosmetic laser and IPL device procedures, complete a minimum of an additional twenty-four hours of hands-on training of at least ten cosmetic procedures for each type of specific procedure that is supervised by a health professional who is acting within the health professional's scope of practice or by a laser technician who has a minimum of one hundred hours of hands-on experience per procedure. The health professional or laser technician must be present in the room during twenty-four hours of hands-on use of lasers or IPL devices. The supervising health professional or laser technician shall verify that the aesthetician or cosmetologist has completed the training and supervision as prescribed by this section.
  6. Submit to the department the provisional certificate from the training program and certification by the health professional or laser technician who directly supervised the applicant in the room during the hands-on training.
- B. The department shall issue a laser technician certificate authorizing the aesthetician or cosmetologist to use lasers and IPL devices if the applicant has completed the training for hair removal or lasers and IPL devices for other cosmetic procedures, as applicable, and shall maintain a current register of those laser technicians in good standing and whether certification is for hair removal only or other cosmetic procedures as well. The department may establish a fee for the registration of aestheticians or cosmetologists as laser technicians and the issuance of certificates pursuant to this subsection. The department shall deposit monies collected pursuant to this subsection in the laser safety fund established by section 32-3234.
- C. An aesthetician or a cosmetologist who has been certified as a laser technician by the department may use a laser or IPL device:

1. For hair removal under the indirect supervision of a health professional whose scope of practice permits the supervision.

2. For cosmetic purposes other than hair removal if the aesthetician or cosmetologist is directly supervised by a health professional whose scope of practice permits the supervision and the aesthetician or cosmetologist has been certified in those procedures.

D. The board shall investigate any complaint from the public or from another board or agency regarding a licensed aesthetician or cosmetologist who performs cosmetic laser procedures or procedures using IPL devices pursuant to this section. The board shall report to the department any complaint it receives about the training or performance of an aesthetician or a cosmetologist who is certified as a laser technician.

E. An aesthetician or a cosmetologist who used laser and IPL devices before November 24, 2009 may continue to do so if the aesthetician or cosmetologist received a certificate pursuant to this section before October 1, 2010.

F. For the purposes of this section:

1. "Department" means the department of health services.

2. "Directly supervised" means a health professional who is licensed in this state and whose scope of practice allows the supervision supervises the use of a laser or IPL device for cosmetic purposes while the health professional is present at the facility where and when the device is being used.

3. "Health professional" means a person who is licensed pursuant to either:

(a) Chapter 11, article 2 of this title and who specializes in oral and maxillofacial surgery.

(b) Chapter 13, 14, 15, 17 or 25 of this title.

4. "Indirect supervision" means supervision by a health professional who is licensed in this state, whose scope of practice allows the supervision and who is readily accessible by telecommunication.

5. "IPL device" means an intense pulse light class II surgical device certified in accordance with the standards of the department for cosmetic procedures.

6. "Laser" means any device that can produce or amplify electromagnetic radiation with wavelengths in the range of one hundred eighty nanometers to one millimeter primarily by the process of controlled stimulated emission and certified in accordance with the standards for the department for cosmetic procedures.

7. "Laser technician" means a person who is or has been certified by the department pursuant to its rules and chapter 32, article 2 of this title.

**32-517. License renewal**

A. Except as provided in section 32-4301, a cosmetologist, an aesthetician, a nail technician or a hairstylist shall renew the person's license on or before the person's birthday once every two years.

B. A cosmetologist, an aesthetician, a nail technician or a hairstylist shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew the person's license.

C. A cosmetologist, an aesthetician, a nail technician or a hairstylist who fails to renew the person's license on or before the person's birthday shall also pay the prescribed delinquent renewal penalty in order to renew the license.

**32-518. Inactive licenses; reactivation; suspension**

A. A license that is not renewed pursuant to section 32-517 automatically reverts to inactive status.

B. A licensee may reactivate an inactive license:

1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.

2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.

C. A license that has been inactive for ten years is automatically suspended.

D. A licensee shall not practice under an inactive license.

**32-519. Eyelash technicians; registration; renewal; register**

A. An eyelash technician must be registered by the board. A person is entitled to receive an eyelash technician registration if the person does all of the following:

1. Submits to the board an application for an eyelash technician registration on a form supplied by the board.

2. Either:

(a) Completes and receives appropriate credits for at least two years of high school education or its equivalent as prescribed by the board in its rules and submits satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Submits to the board satisfactory evidence that the person successfully completed a board-approved training program. The board shall require no more than thirty hours of training. A training program shall not be required to be licensed as a school by the board to be approved. The board-approved training program shall provide a provisional registration to the person verifying the successful completion of the training. Any person who satisfactorily demonstrates training received prior to October 30, 2023 shall be eligible for registration.

4. Pays the prescribed fees.

B. Except as provided in section 32-4301, an eyelash technician shall renew the person's registration on or before the person's birthday once every two years. An eyelash technician shall submit an application for renewal accompanied by the prescribed renewal fee to renew the person's registration. An eyelash technician who fails to renew the person's registration on or before the person's birthday shall also pay the prescribed delinquent renewal penalty to renew the registration.

C. The board shall maintain a current register of registered eyelash technicians who are in good standing with the board.

### 32-531. Instructors; applications; qualifications

A person is entitled to receive a license to teach cosmetology, aesthetics, nail technology or hairstyling in a school if the person does all of the following:

1. Submits to the board an application for an instructor license on a form prescribed by the board.

2. Either:

(a) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.

(b) Submits to the board satisfactory evidence that the person is at least eighteen years of age.

3. Is a licensed cosmetologist, aesthetician, nail technician or hairstylist, is applying for an instructor license to teach a subject in which the person is licensed and has

practiced for at least one year in the profession for which the person is applying for an instructor license and has received the following hours of instructor training:

- (a) For a cosmetologist instructor, three hundred fifty hours.
  - (b) For an aesthetics instructor, three hundred fifty hours.
  - (c) For a nail technician instructor, three hundred fifty hours.
  - (d) For a hairstylist instructor, three hundred fifty hours.
4. Passes the examination for an instructor license.
  5. Pays the prescribed fees.

### 32-532. Instructors; license reciprocity

Notwithstanding section 32-531, a person is entitled to receive a license to teach cosmetology, aesthetics, nail technology or hairstyling in a school if the person submits to the board an application for an instructor license on a form prescribed by the board, pays the prescribed fees and complies with one of the following:

1. Is a current licensed cosmetology instructor, aesthetics instructor, nail technology instructor or hairstyling instructor in another state or country.
2. Is a current licensed cosmetologist, aesthetician, nail technician or hairstylist in another state or country and has at least one year of instructor experience in the other state or country in cosmetology, aesthetics, nail technology or hairstyling, or any combination thereof.
3. Does all of the following:
  - (a) Either:
    - (i) Submits to the board satisfactory evidence that the person is at least eighteen years of age.
    - (ii) Holds a diploma from a high school or its equivalent as prescribed by the board in its rules and submits to the board satisfactory evidence that the person is at least sixteen years of age.
  - (b) Is a licensed cosmetologist, aesthetician, nail technician or hairstylist in another state or country.
  - (c) Completes instructor training in another state or country that has instructor education requirements that are at least substantially equivalent to those of this state.

- (d) Passes the examination for an instructor license.
- (e) Has five years of licensed industry experience within the ten years preceding application.
- (f) Meets requirements as prescribed by the board in its rules.

**32-533. Instructor examinations; reexaminations**

- A. An examination for an instructor license shall be written and practical.
- B. The board shall inform each applicant of the applicant's examination results in writing.
- C. The board shall make an accurate record of each examination.
- D. An applicant who fails any part of the examination twice shall attend a school licensed pursuant to this chapter for two hundred fifty hours of instructor training.
- E. An applicant desiring to be reexamined shall apply to the board on forms it prescribes and furnishes and pay the prescribed examination fee.

**32-535. Instructor license renewal**

- A. Except as provided in section 32-4301, an instructor shall renew the instructor's license on or before the instructor's birth date once every two years.
- B. An instructor shall submit an application for renewal accompanied by the prescribed renewal fee in order to renew the instructor's license.
- C. An instructor who fails to renew the instructor's license on or before the instructor's birth date as prescribed by this section shall also pay the prescribed delinquent renewal penalty in order to renew the license.

**32-536. Instructor practice; instruction**

- A. An instructor may practice in the category of practice he is licensed to practice in a salon licensed pursuant to this chapter.
- B. An instructor shall teach only in the area he is licensed by the board to teach.

**32-537. Instructor; inactive licenses; reactivation; suspension**

- A. An instructor license that is not renewed pursuant to section 32-535 automatically reverts to inactive status.
- B. A licensee may reactivate an inactive license:

1. If a license has been inactive for less than one year, by paying the prescribed delinquent renewal penalty.
2. If a license has been inactive for one year or more but less than ten years, by paying the prescribed delinquent renewal penalty and submitting proof of satisfying educational requirements prescribed by the board in its rules.
- C. A license that has been inactive for ten years is automatically suspended.
- D. A licensee shall not practice under an inactive license.

**32-541. Salon requirements**

- A. A person is entitled to receive a license to operate a salon if the person:
  1. Submits to the board an application for a salon license on a form supplied by the board.
  2. Pays the prescribed fee.
- B. The safety and sanitary requirements specified by the board in its rules shall be requirements while a salon is operating.
- C. Each salon shall have an individual designated as the manager of the salon.

**32-542. Salon inspections**

The board shall inspect salons on a regular basis as it deems necessary.

**32-543. Required display**

Salons shall display the following in a conspicuous location that is readily observable by any patron:

1. The current salon license.
2. The current licenses for cosmetologists, aestheticians, nail technicians or hairstylists practicing in the salon.
3. The latest inspection sheet.

**32-544. Salon license renewal**

- A. Except as provided in section 32-4301, a salon license is renewable each year on or before the anniversary date of the first license by meeting all the requirements for a salon license and paying the prescribed renewal fee.

B. A salon owner who fails to renew the owner's salon license each year by the anniversary date of the license shall apply pursuant to section 32-541 and pay the prescribed fee and delinquent renewal penalty.

**32-545. Change of ownership or location; change of trade name**

A. A salon shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.

B. A salon owner shall notify the board in writing within ten days after any change of ownership of the salon or change in the salon's location or trade name and pay the prescribed fee.

**32-551. School licenses; applications; requirements**

A person is entitled to a license to operate a school if:

1. The person pays the prescribed fee.
2. The person furnishes a surety bond in the amount of ten thousand dollars approved by the board and executed by a corporate bonding company authorized to do business in this state. The bond shall be for the benefit of and subject to the claims of the state for failure to comply with the requirements of this chapter and any student who fails to receive the full course of instruction required under this chapter.
3. The person submits to the board under oath an application for a school license on a form supplied by the board and other documentation required by the board in its rules.
4. The proposed school passes an inspection by the board before it opens.

**32-552. Change of ownership or location; change of trade name**

A. A school shall not change from the name of one licensee to another or from one location to another or change its trade name without filing a new application and paying the prescribed fee.

B. A school owner shall notify the board in writing within ten days after any change of ownership of the school or change in the school's location or trade name, submit a new license application for the school and pay the prescribed fee.

**32-553. Instruction staff**

A. Instructors shall not apply their time to private practice with or without compensation in a school.

B. Students shall be under the constant supervision of an instructor.

### 32-554. Required display

Schools shall display the following in a conspicuous location:

1. The current school license.
2. The current licenses of instructors teaching in the school.
3. The latest inspection sheet.

### 32-555. Equipment

A school shall contain sufficient equipment as prescribed by the board in its rules.

### 32-556. Separation of schools from other businesses

A school of any type, including a cosmetology school, may include programs related to a subject that is similar to cosmetology but may not include a salon. A cosmetology school may offer for sale cosmetology products and related articles.

### 32-557. Services for the public; restrictions

- A. Students may render services to the public only under the direct supervision of an instructor.
- B. The following notice shall be posted in a conspicuous place within the school in letters large enough to be read across the length of the room, "school of cosmetology — work done exclusively by students."
- C. A student in a school shall not receive a salary or commission from the school for any cosmetology, aesthetics, nail technology or hairstyling services while enrolled in the school as a student. A student who is enrolled in a school for the purpose of becoming an instructor may be a paid employee of the school.
- D. A school shall post a price list for services rendered to the public that is large enough to be easily read from a distance of ten feet.

### 32-558. Student-school contracts

A private school is required to execute a contract between itself and a student in duplicate. The form of the contract shall be approved by the board. A contract between a school and a student shall bear the signature of a school official and the student or parent or guardian if the student is under eighteen years of age. A fully executed copy of the contract shall be given to the student and the school shall keep the original copy.

### 32-559. School catalogs

A. A private school shall submit a copy of its official catalog to the board for board approval.

B. A private school catalog shall contain the following:

1. Name and address of the school.
2. Date of publication.
3. Admission requirements and procedures used by the school.
4. Number of hours of training required for licensure.
5. A brief outline of the curriculum offered by the school.
6. A description of the school's general physical facilities and equipment.
7. Policies relating to tardiness, absences, make-up work, conduct, termination and other rules of the school.
8. The grading system, including a definition of credit units if any.
9. The type of document awarded on graduation from the school.

#### 32-560. Transfer procedures

A student who desires to transfer from one school to another shall execute an application for transfer form prescribed by the board. The transferring school shall complete the application for transfer in triplicate and forward the requested information to the board within three days after the student executes the application for transfer.

#### 32-561. Student records

A school shall keep records as prescribed by the board in its rules on file for each student enrolled or reenrolled in a school for a regular course, postgraduate course or additional hours.

#### 32-562. School inspections

The board shall inspect schools on a regular basis as it deems necessary.

#### 32-563. School closings

A. Within five days after a school closes it shall notify the board by certified mail of the closure.

B. Within ten days after a school closes it shall forward all student records to the board.

### 32-564. School license renewal

A. Except as provided in section 32-4301, school licenses are renewable on or before June 30 of every year by meeting all the requirements for a school license and paying the prescribed renewal fee.

B. A school owner who fails to renew his school license by June 30 of every year shall apply pursuant to section 32-551 and pay the prescribed fee and delinquent renewal penalty.

### 32-565. Schools; postsecondary education institutions

A school must be recognized as a postsecondary educational institution if both of the following apply:

1. The school admits as regular students only individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma or who are beyond the age of compulsory education as provided by section 15-802.
2. The school is licensed by name by the board under this chapter to offer one or more training programs beyond the secondary school level.

### 32-571. Disciplinary action

The board may take any one or a combination of the following disciplinary actions:

1. Revoke a license or registration.
2. Suspend a license or registration.
3. Impose a civil penalty in an amount of not more than \$2,000.
4. Impose probation requirements best adapted to protect the public safety, health and welfare, including requirements for restitution payments to patrons.
5. Publicly reprove a licensee or registrant.
6. Issue a letter of concern.

### 32-572. Grounds for disciplinary action or refusal to issue or renew license or registration; definition

A. The board may take disciplinary action or refuse to issue or renew a license or registration for any of the following causes:

1. Continued performance of cosmetology, aesthetics, nail technology, hairstyling or eyelash extension services by a person knowingly having an infectious or communicable disease.

2. Conviction of a crime.

3. Commission of an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.

4. Malpractice or incompetency.

5. Knowingly advertising by means of false, misleading, deceptive or fraudulent statements through communication media.

6. Violating this chapter or any rule adopted pursuant to this chapter.

7. Making oral or written false statements to the board.

8. Repeated failure to correct infractions of safety and sanitary requirements prescribed by the board in its rules.

9. Failing to comply with an order of the board.

B. A conviction of a crime or act shall not be a cause of refusal to issue or renew a license or registration unless the crime or act is substantially related to the qualifications, functions or duties of the license or registration for which application is made.

C. The expiration, cancellation, suspension or revocation of a license or registration or a licensee's or registrant's voluntary surrender of a license or registration does not deprive the board of jurisdiction to do any of the following:

1. Proceed with an investigation of a licensee or registrant.

2. Proceed with an action or disciplinary proceeding against a licensee or registrant.

3. Suspend or revoke a license or registration.

4. Deny the renewal or right of renewal of a license or registration.

D. For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of no contest.

### 32-573. Procedure for disciplinary action; appeal

A. The board on its own motion may investigate any information that appears to show the existence of any of the causes set forth in section 32-572. The board shall

investigate the report of any person that appears to show the existence of any of the causes set forth in section 32-572. A person who reports pursuant to this section and who provides the information in good faith is not subject to liability for civil damages as a result.

B. If, after completing its investigation, the board finds that the evidence is not of sufficient seriousness to merit direct action against a license or registration, it may take either of the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.
2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license or registration there is sufficient evidence for the board to notify the licensee or registrant that continuation of the activities that led to the information or report being made to the board may result in action against the licensee's license or registrant's registration.

C. If, in the opinion of the board, it appears the information or report is or may be true, the board shall request an informal interview with the licensee or registrant concerned. The interview shall be requested by the board in writing, stating the reasons for the interview and setting a date at least ten days after the date of the notice for conducting the interview.

D. If, after an informal interview, the board finds that the evidence warrants suspension or revocation of a license or registration issued pursuant to this chapter, imposition of a civil penalty or public reproof or if the licensee or registrant under investigation refuses to attend the informal interview, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this subsection shall be conducted in accordance with title 41, chapter 6, article 10.

E. A licensee or registrant who has been notified pursuant to subsection D of this section of charges pending against the licensee or registrant shall file with the board an answer in writing to the charges not more than thirty days after the licensee or registrant receives the complaint. If the licensee or registrant fails to answer in writing within this time, it is deemed an admission by the licensee or registrant of the acts charged in the complaint and the board may take disciplinary action allowed by this chapter without a hearing.

F. If the board finds that the evidence is not of sufficient seriousness to merit suspension or revocation of a license or registration issued pursuant to this chapter, imposition of a civil penalty or public reproof, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the evidence is without merit.

2. File a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license or registration there is sufficient evidence for the board to notify the licensee or registrant that continuation of the activities which led to the information or report being made to the board may result in action against the licensee's license or registrant's registration.

3. Impose probation requirements.

G. If a licensee or registrant violates this chapter or a rule adopted pursuant to this chapter, the board may assess the licensee or registrant with the board's reasonable costs and expenses, including attorney fees, incurred in conducting the investigation and administrative hearing. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in a separate account in the barbering and cosmetology fund established by section 32-505. The board may only use these monies to defray its expenses in connection with investigation related training and education, disciplinary investigations and all costs related to administrative hearings. Notwithstanding section 35-143.01 the separate account monies may be spent without legislative appropriation.

H. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

**32-574. Unlawful acts; violation; classification**

A. A person shall not:

1. Perform or attempt to perform cosmetology, aesthetics, nail technology, hairstyling or personal services related to eyelash extensions without a license or registration in that category issued pursuant to this chapter, or practice in a category in which the person does not hold a license or registration.

2. Display a sign or in any way advertise or hold oneself out as a cosmetologist, aesthetician, nail technician, hairstylist or eyelash technician or as being engaged in the practice or business of cosmetology, aesthetics, nail technology, hairstyling or eyelash extensions without being licensed or registered pursuant to this chapter.

3. Knowingly make a false statement on an application for a license or registration pursuant to this chapter.

4. Allow an employee or another person under the person's supervision or control to perform cosmetology, aesthetics, nail technology, hairstyling or personal services related to eyelash extensions without a license issued pursuant to this chapter.

5. Practice or attempt to practice cosmetology, aesthetics, nail technology, hairstyling or personal services related to eyelash extensions in any place other than in a salon

licensed by the board unless the person is requested by a customer to go to a place other than a salon licensed pursuant to this chapter and is sent to the customer from the salon, except that a person who is licensed or registered pursuant to this chapter may practice, without the salon's request, cosmetology, aesthetics, nail technology, hairstyling or personal services related to eyelash extensions in a health care facility, hospital, residential care institution, nursing home or residence of a person requiring home care because of an illness, infirmity or disability.

6. Obtain or attempt to obtain a license or registration by the use of monies other than the prescribed fees or any other thing of value or by fraudulent misrepresentation.

7. Provide any service to a person having a visible disease, pediculosis or open sores suggesting a communicable disease until the person furnishes a statement signed by a physician who is licensed pursuant to chapter 13 or 17 of this title stating that the disease or condition is not in an infectious, contagious or communicable stage.

8. Operate a salon or school without being licensed by the board.

9. Violate this chapter or any rule adopted pursuant to this chapter.

10. Ignore or fail to comply with a board subpoena.

11. Use the title of "aesthetician", "cosmetologist", "nail technician" or "hairstylist" or any other title or term likely to be confused with "aesthetician", "cosmetologist", "nail technician", "hairstylist" or "eyelash technician" in any advertisement, statement or publication unless that person is licensed or registered by the board.

12. Teach cosmetology, aesthetics, nail technology or hairstyling in this state unless the person is licensed as an instructor pursuant to article 3 of this chapter.

B. An instructor shall not render cosmetology, aesthetics, nail technology or hairstyling services in a school unless the services are directly incidental to instructing students.

C. A person who violates this section is guilty of a class 1 misdemeanor.

### 32-575. Injunctions

The board, the attorney general, a county attorney or any other person may apply to the superior court in the county in which acts or practices of any person which constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

### 32-576. Confidentiality

A. Examination materials, records of examination grading and performance and transcripts of educational institutions are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2.

B. All investigation files are confidential and are not subject to inspection pursuant to title 39, chapter 1, article 2 until the matter is final. The licensee shall be informed of the investigation. The public may obtain information that discloses that an investigation is being conducted and the general nature of the investigation.

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October 24, 2023

Frank Migali, *Executive Director*  
Barbering and Cosmetology Board  
1740 W. Adams St., Suite 4400  
Phoenix, AZ 85007

**RE: Recommendations for R4-10-B301(B)(2)(n)**

Dear Executive Director Migali:

On behalf of the Arizona Society of Plastic Surgeons (AzSPS) and the American Society of Plastic Surgeons (ASPS), we are writing **in opposition to** R4-10-B301 and recommend striking amended subsection (B)(2)(n) that would add “*Introduction to Electricity and Light Therapy for Cosmetic Purposes Including Lasers/Intense Pulsed Light (IPL) Procedures and Devices*” to the Aesthetic School curriculum. ASPS is the largest association of plastic surgeons in the world, representing more than 8,000 members and 92 percent of all board-certified plastic surgeons in the United States – including 193 board-certified plastic surgeons in Arizona. Our mission is to advance quality care for plastic surgery patients and promote public policy that protects patient safety.

While laser procedures are extremely safe and effective when used by medical professionals with appropriate training and oversight, they can cause painful burns and permanent scarring in the wrong hands. Even when used at the manufacturer’s recommended settings, these devices can cause profound skin injury. For instance, despite only one-third of laser hair removal procedures being performed by non-physicians (including nurses, nurse practitioners, estheticians, or “technicians”), they accounted for 76 percent of injury lawsuits from 2002-2012. This number jumped to 85.7 percent of lawsuits filed between 2008-2012, with 64 percent of treatments performed outside of a traditional medical setting.

For patient safety and quality outcomes, it is critical that all lasers and IPL devices are only operated by physicians or other licensed medical professionals under direct physician supervision. These licensed professionals include physician assistants (PAs), nurse practitioners (NPs), and registered nurses (RNs) who are acting within the scope of their licensure and are under a physician's supervision. This should not include estheticians, cosmetologists, or other professionals who have no medical training. Additionally, physicians and PAs or NPs acting under physician supervision can conduct the initial assessment of the patient, but treatment should not commence until reviewed by the physician.

No amount of training can provide the medical expertise necessary to perform procedures involving lasers or light-based devices. Requiring a 600-hour curriculum that would, as written, include an introduction-level course on lasers and IPLs is insufficient and can never supplement the medical training obtained by nurses, physician assistants or physicians – training which is necessary to identify complications that may arise while performing the laser procedure. Therefore, it would not be appropriate for estheticians, or any other nonmedical professional, to perform procedures that could jeopardize patient safety.

We respectfully urge the Board to allow only licensed medical professionals, and those they supervise, to use lasers and light-based hair removal or reduction devices. As subsection (B)(2)(n) of R4-10-B301 would require non-physician estheticians to receive minimal training in complex medical procedures that fall squarely within the practice of medicine, we ask that it be stricken from the proposed rule's amended language.

Thank you for consideration of our comments. Please do not hesitate to contact Joe Mullin, ASPS State Affairs Manager, at [jmullin@plasticsurgery.org](mailto:jmullin@plasticsurgery.org) or (847) 981-5412 with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory Greco". The signature is fluid and cursive, with a large initial "G" and a distinct "D" at the end.

Gregory Greco, DO, FACS  
President, American Society of Plastic Surgeons

A handwritten signature in black ink, appearing to read "Steven Sigalove". The signature is fluid and cursive, with a large initial "S" and a distinct "S" at the end.

Steven Sigalove, MD, FACS  
President, Arizona Society of Plastic Surgeons

Name: Brian McKew

Email: [Academyofnail@gmail.com](mailto:Academyofnail@gmail.com)

Phone: [6029955666](tel:6029955666)

License Number: 82300003

Public comment - Re Lash Tech: I would encourage considering - qualified instructor to include Nail Tech Instructor who would be qualified with substantial safety baseline and understanding of anatomy, chemistry, skin, board rules and statues, health & safety. The nail instructor is capable to add the protocol of Eye structure and products particular to the the lash protocol can be added

Name: Brian McKew

Email: [Academyofnail@gmail.com](mailto:Academyofnail@gmail.com)

Phone: [6029955666](tel:6029955666)

License Number: 71700003

Re: Proposed rulemaking: - Current Law : R4 10 306 give specifics to "Curricula Hours" for all disciplines. I do not see a corresponding area or revision or inclusion of the content of this section R4-10-306 in the proposed rulemaking.... is this info contained or specified going forward? Thank you - Brian McKew

Name: Brian McKew  
Email: [Academyofnail@gmail.com](mailto:Academyofnail@gmail.com)  
Phone: [6029955666](tel:6029955666)  
License Number: 71700003

Public Rulemaking comment.... As a Schoolowner of 24 years i offer the following input:

R4-10-307 B1, and B2 - Why differentiate credit hours fro all disciplines @ nine credit hours / vs nail @ 6 credit hours. (Both Esthetic and Nail are 600 hour courses) - Total instructor is 350 - there seems no basis for differentiation as all instructor training is more closely related to teaching methodology and not core (practical) subject knowledge. , propose - include nail technology in B1.

R4-10-307: P1 - The change to a max 8 hours a day is a disservice and does not serve to improve the current max of 56 hours per week. As nail courses are limited, We have candidated driving long distances: Prescott, Payson - to Phoenix, and doing 12 hour lextended days. As work forces and other environments do 12 hour shifts, why penalize a candidate in cosmetology with extended time frames and a restriction that surpasses current law?

Recommend- Leave 56 max per week.

Sincerely,  
Brian McKew  
Academy of Nail Technology  
Owner - Licensed Instructor

From: **Christine Mendez** <[christinemendez04@gmail.com](mailto:christinemendez04@gmail.com)>  
Date: Wed, Sep 13, 2023 at 3:50 PM  
Subject: Lash Extension Certification  
To: <[fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov)>

To whom it may concern,

I Christine Mendez do not approve of the changes in regards to Lash Extension Technician Certification and would like to petition the Arizona State Board of Cosmetology to reconsider a required separate certification with a bi-annual fee when the professional is a licensed Esthetician or a licensed cosmetologist. Being a licensed professional, we pay thousands of dollars to obtain a license that allows us to safely perform such services. Many licensed professionals in the beauty Industry have obtained said Licenses due to previous requirements. The changes will allow others with very minimal training (30 hours) to obtain the same certification at the same cost but not in addition to a license fee. Changes to current regulations are in a sense penalizing those that have received a license with an added fee and additional requirements.

I hope that you will take this into consideration before everything is finalized.

Thank you for your time and consideration,  
Christine Mendez, LE

From: **Cirocco Stout** <[ciroccostout@gmail.com](mailto:ciroccostout@gmail.com)>  
Date: Mon, Oct 16, 2023 at 3:18 PM  
Subject: Arizona new lash requirements  
To: <[fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov)>

Hello, my name is **Cirocco Stout**,

I'm one of the original lash artists in the United States. I actually live here in Arizona. I started lashing in California, 2003/2004. I currently have my Arizona aesthetic license and primarily have been doing Lash services for the last 20 years!!

I've been able to watch the Lash industry shift and change over all of these years. All the good, all the bad & everything in between!

I unfortunately can't make it to the oral hearing on October 26 which I'm so sad I will be missing!! I have prior obligations at EVIT talking to students working towards getting their Cosmo and aesthetic licenses!

I wanted to extend myself to you or anyone regarding all of the Lash requirements for teaching and training purposes!

I do see so many things that are missing in our industry regarding the health and safety of the eyes with lash extensions. It is just absolutely shocking to me how many technicians don't understand the importance of chemicals/fumes around something delicate like an eye! So much could be added to the curriculum that will be required in the future for Lashes and Arizona to help the health and safety of all clients seeking out the service!

I would love to talk openly with anyone who has any questions or comments moving forward to better our state's rules and regulations for lash technicians and training programs. I'm very excited for all of the upcoming shifts and changes.

Thank you so much for!!!

Cirocco Stout

My phone number is 520-977-0640

My email is [Ciroccostout@gmail.com](mailto:Ciroccostout@gmail.com)

Name: Damaris Tamayo

Email: [damaris.e.tamayo@gmail.com](mailto:damaris.e.tamayo@gmail.com)

Phone: [6027369026](tel:6027369026)

License Number:

as someone that went to cosmetology school specifically for lash extensions, I think it's unfair that I had to end up in so much debt to get my license in order for you guys to randomly decide one day that with just a couple of hours you can be licensed for lashes.

Name: Darlene Lawson  
Email: [msdlawson@gmail.com](mailto:msdlawson@gmail.com)  
Phone: [4808233860](tel:4808233860)  
License Number: Barber: 497

I am a licensed Barber in the state of Ohio, Arizona, and Texas. Since facials are part of the curriculum for both Cosmetologist and Barbers, there needs to be wording to include Barbers, Cosmetologist, and Aesthetician that are grandfathered in.

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 10. BARBERING AND COSMETOLOGY BOARD

#### 1. Identification of the rulemaking:

Under Laws 2021, Chapter 334, the legislature created the Barbering and Cosmetology Board (Board) and eliminated both the existing Boards of Cosmetology and Barbers. The legislature did not, however, combine the statutes regarding the two occupations. As required under A.R.S. § 41-2955(B), the legislature indicate the purpose of the consolidation was to ensure the public is protected from the incompetent practice of barbering and cosmetology by establishing minimum qualifications for entry into these disciplines and swift and effective discipline for practitioners who violate barbering or cosmetology statutes or rules. Under Laws 2021, Chapter 334, Section 34, the consolidation was effective on December 31, 2021.

Under Laws 2023, Chapter 18, the legislature added A.R.S. § 32-519, which created the position of eyelash technician and required eyelash technicians to register with the Board and pay a fee established by the Board. The statute also required an eyelash technician to complete a Board-approved training program.

Under Laws 2023, Chapter 20, the legislature amended A.R.S. §§ 32-532 and 32-557 regarding becoming a cosmetology, aesthetics, nail technology, or hairstyling instructor by reciprocity and allowing a student enrolled in a school for the purpose of becoming an instructor to be a paid employee of the school.

Under Laws 2023, Chapter 22, the legislature amended A.R.S. §§ 32-510, 32-512, and 32-512.01 to add aestheticians, nail technicians, and hairstylists as disciplines able to obtain required training through a U.S. Department of Labor or Department of Economic Security-approved apprenticeship program.

In this rulemaking, the Board makes the changes to existing cosmetology and barbering rules that are needed to comply with statutory changes. The Board also makes minor, non-substantive changes to clarify the rules. Some of these changes address issues identified

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

in 5YRRs approved by Council for the two previous boards in 2020. An exemption from Executive Order 2022-01 was provided for this rulemaking by Brian Norman, of the governor's office, in an e-mail dated October 24, 2022. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Hannah Johnson, of the governor's office, in an e-mail dated January 24, 2024.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is completed, the Board's rules will not be consistent with recent statutory changes and integration of rules applicable to the two previous boards will not be fulfilled.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government to have rules that are inconsistent with statute because the inconsistent rules cause confusion and create regulatory burdens.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is completed, the rules will be consistent with statute.

Integration of rules applicable to the two previous boards will be fulfilled.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The Board believes the economic impact of this rulemaking will be minimal because the only substantive changes made to existing rules are those required by statute. Individuals who choose to register as an eyelash technician and those who choose to provide training programs for eyelash technicians will be required to comply with procedures for registration and program approval and pay specified fees.

Changes having minimal positive economic impact or reducing regulatory burdens include:

- For business-entity applicants, reducing the number of officers, partners, or members required to submit an application;
- Clarifying the difference between crossover and transfer hours;
- Reducing the potential maximum fee for a cosmetologist to renew a delinquent personal license;
- Allowing use of plastic liners to maintain cleanliness of pedicure tubs;

- Reducing the amount of time a barbering instructor applicant has to have practiced barbering before applying to become an instructor;
- Clarifying that no license issued by the Board is transferrable;
- Allowing use of virtual learning for theory curriculum requirements.

Changes having minimal negative economic impact or adding small regulatory burdens include:

- Requiring all applications be submitted online;
- Reducing the amount of time for a school licensee to provide notice and updated information to the Board;
- Requiring the school licensee of a closing school to release student and employee belongings without request;
- Reducing the amount of time for the school licensee of a closing school to deliver student records to the Board;
- Clarifying information required for certificates of graduation and hours and requiring school licensees to provide the certificates to applicable students;

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Frank Migali, Executive Director

Address: 1740 W Adams Street, Suite 4400

Phoenix, AZ 85007

Telephone: 480-784-4539

E-mail: [azboard@bcb.az.gov](mailto:azboard@bcb.az.gov)

Web site: [bcb.az.gov](http://bcb.az.gov)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees, applicants, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The Board licenses or registers individuals in seven disciplines: barber, aesthetician, cosmetologist, hair stylist, nail technician, eyelash technician, and instructor. The Board licenses individuals or business entities to operate a school or an establishment. The Board also approves eyelash technician training programs. On the advice of the Board's assistant attorney general, the Board is waiting until the rules are in effect to register eyelash

technicians and approve eyelash technician training programs. The number of current licensees by discipline is:

Barbers: 7,402

Aestheticians: 21,398

Cosmetologists: 51,820

Hair stylists: 1,010

Nail technicians: 17,926

Schools: 123

Establishments: 15,648

During the last year, the Board received 9,471 applications for an initial license and 21,318 applications for renewal. Of the renewal applications from a cosmetologist, aesthetician, hair stylist, or nail technician, 229 were renewing after being inactive for more than five years. During the last year, the Board, which has 22.5 FTEs, collected \$2,704,800 in fees and charges for services. The Board was appropriated \$2,864,800

Under Laws 2021, Chapter 334, which created the Board and eliminated the existing Boards of Barbering and Cosmetology, it became necessary to create one set of rules rather than two separate sets. In 2022, the Board re-codified rules of both the Barber and Cosmetology Boards into one Chapter. The recodification did not amend the rules or combine them so there were duplications and inconsistencies within the rules. This rulemaking combines the existing rules into one set of rules with a focus on maintaining only rule provisions necessary to protect public health and safety. Even though there are no substantive changes other than those required by statute, combining two sets of rules may present challenges to existing licensees who are used to doing things in a particular way. In particular, requiring all applications to be submitted electronically may be challenging for some. The rule changes also present a challenge to the Board, which has to amend application forms and licensing procedures.

One of the goals of the legislature when it created the Barbering and Cosmetology Board was swift and effective discipline for practitioners who violate statutes or rules. During the last year, the Board received 555 complaints regarding licensees. The complaints frequently alleged unlicensed activity and unsanitary conditions. Of the complaints received, 251 went

before the Board and 39 licensees were disciplined. The discipline imposed included a non-disciplinary letter or concern, a disciplinary letter of concern, and civil penalties.

During the last year, two schools for which a license to operate had been issued, closed. Some of the provisions in this rulemaking require the licensee of a closing school to act more quickly to protect the interests and property of students and employees. This minor regulatory burden is designed to protect the public.

The Board has not started to register eyelash technicians or approve eyelash technician training programs under the recent statutory change. However, currently licensed cosmetologists and aestheticians may engage in eyelash technology. The Board believes there will be high demand from individuals seeking to register as an eyelash technician or offer an approved eyelash technician training program. The Board anticipates that at least 2,500 individuals will register as an eyelash technician and 75 persons will seek approval of an eyelash technician training program in the first year.

The primary economic impact of this rulemaking is on the Board, which has to pay to complete and implement the rulemaking, modify all application forms, modify licensing procedures, and ensure Board employees are trained in the new procedures. The Board has the benefit of having rules that comply with statute.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. The Board's costs and benefits are described in item 4. The Board will not need additional full-time employees to implement and enforce the rules.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Licensees and registrants, schools, approved eyelash technician training programs, and establishments are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

a. Identification of the small business subject to the rulemaking:

Licenses and registrants, schools, approved eyelash technician training programs, and establishments are small businesses subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

All persons subject to the rulemaking are required to apply to the Board for a license, registration, or approval, pay the specified fee, and renew the license, registration, or approval when specified. Those licensed, registered, or approved by the Board are required to comply with all statutes and rules. The rules, which are designed to protect public health and safety, include requirements regarding infect control and safety, equipment necessary to provide the services for which a license was issued, and curriculum and operational standards for schools.

c. Description of methods that may be used to reduce the impact on small businesses:

The Board believes all those subject to the rulemaking are small businesses. As a result, it is not possible to reduce the already minimal impact of the rulemaking on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The rulemaking will not directly affect private persons or consumers.

9. Probable effects on state revenues:

There will be a small increase in state revenues resulting from new fees to register as an eyelash technician, obtain approval of an eyelash technician training program, and renew the registration. If the Board's estimate in item 4 is correct, the Board will collect \$131,250 during the first year from registering eyelash technicians and approving eyelash technician training programs. Ten percent of this will go to the state's general fund.

The 229 cosmetologists, aestheticians, hair stylists, and nail technologists who renewed their personal license after it was inactive for more than five years would have saved as much as \$60 each under the amended rules. This would produce a small decreased in state revenues.

10. Less intrusive or less costly alternative methods considered:

Because the rules are neither intrusive nor costly, the Board did not consider an alternative method.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(23).



Name: Ilene Herrera

Email: [ileneherrera@gmail.com](mailto:ileneherrera@gmail.com)

Phone: [623332637](tel:623332637)

License Number:

As a cosmetologist and someone who took a class with someone who did not know how to teach. I believe they should take a course such as an INSTRUCTOR course to make sure they are knowledgeable in how to teach and different techniques.

Name: Jennifer Swan

Email: [skincarebyjenn@gmail.com](mailto:skincarebyjenn@gmail.com)

Phone: [623-229-6646](tel:623-229-6646)

License Number:

It may be helpful to allow current Cos or Aesti practitioners to pay for registration and license renewals all on the same date (and screen). Is there a way to make it all one fee? could their lash registration # be added to the Cosmetology or Aesthetician license- all on one license to simplify what has to be posted and renewed?

30 hours of education is NOT enough for someone who does not have a foundation in Cosmetology or Aesthetician to be working on an eye area safely.

From: **Joseph Mullin** <[jmullin@plasticsurgery.org](mailto:jmullin@plasticsurgery.org)>  
Date: Tue, Oct 24, 2023 at 2:42 PM  
Subject: ASPS Comments - Scope Estheticians - AZ R4-10-B301  
To: [fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov) <[fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov)>  
Cc: Rachel Wellington <[rwellington@plasticsurgery.org](mailto:rwellington@plasticsurgery.org)>

Executive Director Migali:

Attached, please find recommendations from the Arizona Society of Plastic Surgeons and the American Society of Plastic Surgeons regarding R4-10-B301.

Thank you for your consideration of our comments. Please do not hesitate to contact me with any questions.

Best,

**Joe Mullin**  
State Affairs Manager  
American Society of Plastic Surgeons  
(847) 981-5412  
[Jmullin@plasticsurgery.org](mailto:Jmullin@plasticsurgery.org)

Name: Kimberly Logan  
Email: [kimbasstyle@icloud.com](mailto:kimbasstyle@icloud.com)  
Phone: [4804304209](tel:4804304209)  
License Number: Az10402005

Do to the fact that a cosmetologist license covers all aspects of Beauty there should not be an additional fee for already licensed aestheticians or cosmetologists to be certified on lash extensions it should be covered in continuing education and included under the license

From: **Dr. Lauren Ragazzo** <[dr Lauren Ragazzo@gmail.com](mailto:dr Lauren Ragazzo@gmail.com)>  
Date: Tue, Sep 12, 2023 at 8:53 PM  
Subject: For the new lashing bill  
To: <[fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov)>

To whom it may concern,

I am in favor of the new lashing bill. I am the exact person who this bill would greatly help!

I'm a Chiropractic Physician of 10 years and I've had my manicurist license for 20 years. I'd like to do lashes in order to supplement my income, as I cannot see as many chiropractic patients due to the physical demand on my body.

With the prior regulations, I would have had to go back to school for a year or more for esthetics. I could really use a career change now, and to be frank I already have my doctorate. It doesn't really make sense that I'd need an entire year or more to perform a topical beauty enhancement. I also already have 500,000 in loans with my advanced degree and I don't think I could afford another 1-2 full years.

Thank you so much for this alternative option! I really feel like a weight has been lifted.

Kind regards,

Dr Lauren Ragazzo DC, cAVCA

760-840-1867

Name: Lillian Nelsen

Email: [lil.marienelsen@icloud.com](mailto:lil.marienelsen@icloud.com)

Phone: [4804168500](tel:4804168500)

License Number:

I find it upsetting that I put myself through esthetician school, put myself thousands in debt in order to do Lash Extensions, and now you don't even need a license. I believe Lash Extension Professionals should be required to have a cosmetology or estheticians license still.

Otherwise I did all of that for nothing.

I don't do anything but lashes.

I hope it's an easy process for those of us already licensed, certified, and experienced to be Registered.

I still strongly believe taking away the requirement of having a license does not help anybody.

From: **Michelle Mccarter** <[morekidz@gmail.com](mailto:morekidz@gmail.com)>  
Date: Fri, Sep 22, 2023 at 2:00 PM  
Subject: Eyelash Technician Registration  
To: <[azboard@bcb.az.gov](mailto:azboard@bcb.az.gov)>

I am opposed to this new rule/oversight regarding those who place lashes. One reason is those who went through the full esthetician programs are passed the board exams already pay for this license with encompasses their ability to do lashing after training. There should be no need for those to pay a separate fee now to do what they are already doing safely.

The other reason I oppose is that those who place lashes are working around clients eyes. The limited amount of training being proposed could pose a huge risk to their clients with a lack of full training under the esthetician licensing.

Thanks for listening

Michelle

From: **PATRICIA DEWEY** <[p.dewey@cox.net](mailto:p.dewey@cox.net)>  
Date: Wed, Sep 13, 2023 at 9:59 AM  
Subject: Eye Lashes  
To: [fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov) <[fmigali@bcb.az.gov](mailto:fmigali@bcb.az.gov)>

Eye Lash Extensions,

I believe each aesthetician doing eye lash work should be certified by the State of Arizona for this procedure. A certification notifies the public that the staff member has qualified and passed criteria for working in this field.

Respectfully,  
Patricia Dewey RN ret. Aesthetician

Name: Teri Majcher  
Email: [terimajcher@gmail.com](mailto:terimajcher@gmail.com)  
Phone: [6238269546](tel:6238269546)  
License Number: 313000750

Questions that I have in regards to the new statues:

-The option to become a Registered Eye Lash Technician requires no other training than the minimum required 30 hours. So with that being said any person who would want to pursue a Lash Tech Registration could have no other connections than that? The amount of damage that can be sustained during a lashing session, if the Tech is negligent, could amount in a monstrous amount of medical debt.

I do not believe that 30 hours is sufficient to convey the importance of someone's eye sight.

-Has a class ratio been determined? Or is that going to be on the Certifying Lash Tech Teacher?

-Is there a sanitation class that will need to be completed prior to issuance of Registration? All of our licenses in this state require some minimum safety level to keep the general public safe.

Why is that not being included in this Registration?

- Legislation states that the 'Lash Registration Trainers' would be the ones to teach the board approved curriculum. However, some of us have our instructor license so how is the board to distinguish who is "Teaching"? For years we have had to go through additional instruction to learn proper classroom management and now you are going to have an increase of licensed individuals who are going to "claim" that they are the board approved "instructor" for lashes.

This may lead to a confusion for the those that are seeking a registration certification and had the potential to mislead the public on false claims.

- Virtual Option to Listen to public comments?

Another Note not related to the lash thing:

What are the possibilities of having a camera in the Google Meet, so that those that do virtual connect are able to see the members? I will say that seeing the Board of Massage Therapy vs. the BCB meetings. It is a nice touch to be able to see who is talking.

Thank you for your time,  
Teri Majcher

**D-1.**

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**  
Title 9, Chapter 22, Article 15



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** February 8, 2024

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
Title 9, Chapter 22, Article 15

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### Summary

This Five Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) or (Department) covers five (5) rules in Title 9, Chapter 22, Article 15 related to AHCCCS Medical Coverage for People who are Aged, Blind, or Disabled.

In a January 2014 rulemaking, AHCCCS amended the rules in Article 15 to update the incorporations by reference to federal laws related to AHCCCS eligibility for people who are aged, blind, or disabled and amended the Article to include reference to Article 3 for general applicability requirements for AHCCCS coverage.

There was no prior proposed course of action in the 5YRR approved by Council on April 5, 2019.

### Proposed Action

The Department states there is no proposed course of action as these rules are the state explanation of federal eligibility requirements and timelines for individuals who are aged, blind and disabled. As there are no changes to the federal eligibility requirements, there are no changes to these rules.

**1. Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Administration provides essential medical coverage for individuals who are aged, blind, or disabled in Arizona. The program provides support to healthcare providers by reimbursing for services rendered to eligible individuals. It creates job opportunities in the healthcare sector, including physicians, nurses, allied health professionals, and administrative staff. Access to coverage through this program also reduces the financial burden on individuals and families and alleviates the financial strain of medical expenses. Improved health outcomes resulting from access to the program enhance productivity and economic participation. It reduces out-of-pocket costs and contributes to overall economic activity in the state.

Stakeholders include the Administration; individuals in Arizona who are aged, blind, or disabled; workers in the healthcare sector; and the general public.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Administration proposes no changes and maintains that the current rules are the most cost-effective method.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Department states they have not received any written criticisms of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are enforced as written.

**9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states the rules are not more stringent than corresponding federal law.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates the rules are not applicable as the rules do not require a permit or license.

**11. Conclusion**

This Five Year Review Report from the Arizona Health Care Cost Containment System covers five rules in Title 9, Chapter 22, Article 15 related to AHCCCS Medical Coverage for People who are Aged, Blind, or Disabled. As indicated above, the rules are generally clear, concise, and understandable and enforced as written.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

September 28, 2023

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 15;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 15.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or [sladjana.kuzmanovic@azahcccs.gov](mailto:sladjana.kuzmanovic@azahcccs.gov).

Sincerely,  
Nicole Fries  
Deputy General Counsel

Attachments



professionals, and administrative staff. Access to coverage through this program also reduces the financial burden on individuals and families and alleviates the financial strain of medical expenses. Improved health outcomes resulting from access to the program enhance productivity and economic participation. It reduces out-of-pocket costs and contributes to overall economic activity in the state.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Due to the fact that these rules are the state explanation of federal eligibility requirements and timelines for individuals who are aged, blind and disabled, there are no changes needed. There was no proposed course of action in the prior 5YRR.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

No changes proposed, therefore maintaining the current rules is the most cost effective method.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The agency is not proposing a new rule or an amendment to an existing rule due to the fact that federal eligibility criteria and timelines outlined in these rules, have not changed. Therefore, agency's need to be aligned with the general permit requirements of A.R.S. 41-1037 or otherwise explain why the agency believes an exception applies does not exist.

14. **Proposed course of action**

No proposed course of action.

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1028, effective May 1, 2011 (Supp. 11-2).

**R9-22-1443. Repealed****Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1345, effective July 8, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2624, effective July 8, 2011 (Supp. 11-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

**ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED****R9-22-1501. General Information**

A. General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article and Article 3:

1. A person who is aged, blind, or disabled and does not receive SSI cash; and
2. A person terminated from the SSI cash program under R9-22-1505.

B. Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Aged” means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).

“Blind” means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2) and 42 CFR 435.530 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

“Disabled” means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E) and 42 CFR 435.540 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

C. Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4). Section amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014; amendments to this Section were slated to be codified in Supp. 14-1 but due to a clerical error, were not published. The amendments to this Section were published in Supp. 20-4 and no additional amendments have been made to this Section since January 7, 2014 (Supp. 20-4).

**R9-22-1502. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

**R9-22-1503. Financial Eligibility Criteria**

- A. General income eligibility. Except as provided under subsection (B) of this rule, the Administration or its designee shall count the identified income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K.
- B. Exceptions.
1. In-kind support and maintenance under 42 U.S.C. 1382a(a)(2)(A) is excluded.
  2. For a person living with a spouse, the Administration or its designee calculates net income for an eligible couple under 20 CFR 416.1160 as of April 1, 2013, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments, even if the spouse is not eligible for or applying for SSI or coverage under this Article.
  3. In determining the net income of a married couple living with a child or the net income of a person who is not living with a spouse but living with a child, a child allocation is allowed as a deduction from the combined net income of the couple for each child regardless of whether the child is ineligible or eligible. For the purposes of this Section, a child means a person who is unmarried, natural or adopted, and under age 18 or under age 22 if a full-time student. Each child's allocation deduction is reduced by that child's income, including public income maintenance payments, using the methodology under 20 CFR 416.1163(b)(1) and (2) as of April 1, 2013, which is incorporated by reference and on file with the Adminis-

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

tration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

4. In determining the income deemed available to an applicant who is a child from an ineligible parent or parents, an allocation for each eligible or ineligible child of the parent is allowed as a deduction from the parent's income under 20 CFR 416.1165(b). The child's allocation is reduced by that child's income, including public income maintenance payments.
5. In determining the income of a person who receives an annual Title II Cost of Living Allowance (COLA) increase, the COLA amount is disregarded from January until the Administration applies the effective income limits under R9-22-1504 based on the FPL for the calendar year.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

**R9-22-1504. Eligibility For A Person Who is Aged, Blind, or Disabled**

- A. To be eligible for AHCCCS medical coverage, an applicant shall meet the conditions of eligibility and requirements in this Article and:
1. Meet one of the income tests described in subsection (B) or (C), or
  2. The special requirements in R9-22-1505.
- B. The Administration shall determine whether the applicant's countable income, as described in R9-22-1503, is less than or equal to 100 percent of the SSI FBR, as adjusted annually.
- C. The Administration shall determine whether the applicant's countable income, as described in R9-22-1503, without deducting the amount from earned income under 42 U.S.C. 1382a(b)(4)(B)(iii), is less than or equal to 100 percent FPL as adjusted annually.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1505. Eligibility for Special Groups**

- A. The following are considered special groups:
1. A person meeting the requirements in A.R.S. § 36-2903.03 who:
    - a. Is aged, blind, or disabled under 42 CFR 435.520, 42 CFR 435.530, or 42 CFR 435.540 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
    - b. Received SSI cash or AHCCCS medical coverage under this subsection, or subsections (A)(2), (A)(3), or (A)(4) on or before August 21, 1996;
    - c. Was residing in the United States under color of law on or before August 21, 1996; and
    - d. Meets the requirements under this Article;
  2. A disabled child (DC) under 42 U.S.C. 1396a(a)(10)(A)(i)(II). A disabled child is a child who:
    - a. Was receiving SSI cash benefits as a disabled child on August 22, 1996;
    - b. Lost SSI cash benefits effective July 1, 1997, or later, due to a disability determination under Section 211(d) of Subtitle B of P.L. 104-193;
    - c. Continues to meet the disability requirements for a child that were in effect on August 21, 1996; and
    - d. Meets the requirements under this Article;
  3. A disabled adult child (DAC), under 42 U.S.C. 1383c(c) who:
    - a. Was determined disabled by the Social Security Administration before attaining the age of 22 years,
    - b. Became entitled to or received an increase in child's insurance benefits under Title II of the Act on the basis of blindness or disability,
    - c. Was terminated from SSI cash benefits due to entitlement to or an increase in income under Title II of the Act,
    - d. Meets the requirements under this Article, and
    - e. Is 18 years of age or older;
  4. A disabled widow or widower (DWW) under 42 U.S.C. 1383c(b) and (d) who:
    - a. Is blind or disabled,
    - b. Is ineligible for Medicare Part A benefits,
    - c. Received SSI cash benefits the month before Title II of the Act benefit payments began,
    - d. Meets the requirements under this Article;
    - e. Is at least 50 years of age but under age 65; and
    - f. Is unmarried.
  5. Under 42 CFR 435.135, a person who:
    - a. Is aged, blind, or disabled;
    - b. Receives benefits under Title II of the Act;
    - c. Received SSI cash benefits in the past;
    - d. Received SSI cash benefits and Title II of the Social Security Act benefits concurrently for at least one month anytime after April 1977;
    - e. Became ineligible for SSI cash benefits while receiving SSI and benefits under Title II of the Act concurrently; and
    - f. Meets the requirements under this Article.
- B. Income for special groups.
1. Except as provided in subsection (B)(2), income eligibility is determined using the income criteria in R9-22-1503.
  2. Exceptions to income for special groups.
    - a. For a person in the DAC coverage group under subsection (A)(3), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(c).
    - b. For a person in the DWW coverage group, under subsection (A)(4), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(b) and (d).
    - c. For an applicant or member in the coverage group under subsection (A)(5), the portion of the appli-

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

cant's or member's Title II of the Social Security Act benefits attributed to cost-of-living adjustments received by the applicant since the effective date of SSI ineligibility is disregarded in determining income eligibility under 42 CFR 435.135.

- C. 100 percent FBR. As a condition of eligibility for all special groups, countable income shall be equal to or less than 100 percent of the SSI FBR, as adjusted annually.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

**R9-22-1506. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1507. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1508. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**ARTICLE 16. HOSPITAL PRESUMPTIVE ELIGIBILITY****R9-22-1601. General Eligibility Requirements**

- A. Notwithstanding Article 3, a qualified hospital may determine Hospital Presumptive Eligibility (HPE), on the basis of preliminary information, that an individual is eligible for AHCCS medical coverage during the presumptive eligibility period described in this section, if the individual is a United States citizen or eligible qualified alien, and the individual is:
1. Pregnant with gross household income that does not exceed 156% of the FPL;
  2. An adult who meets the requirements of R9-22-1427(E);
  3. A caretaker relative as defined in R9-22-1401(B) with gross household income that does not exceed 106% of the FPL;
  4. Under age 19 with gross household income that does not exceed the limit set in R9-22-1427(D) for the child's age;
  5. A woman screened for breast or cervical cancer by an Arizona program of the National Breast and Cervical Cancer Early Detection Program who meets the requirements of R9-22-2003(A); or
  6. A former foster care child who meets the requirements of R9-22-1432.
- B. Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning: "Qualified hospital" means a hospital that has signed an agreement with the Administration to process HPE applications and has not been disqualified.
- C. Application Process:
1. Right to apply. A person may apply for presumptive eligibility for AHCCCS medical coverage by submitting an Administration-approved application to the qualified hospital.
  2. Application. To initiate the application process, the qualified hospital will accept an application from the applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Internal Revenue Service (IRS) Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant by submitting a written or online application under 42 CFR 435.907.
- D. To establish presumptive eligibility, an applicant must complete and submit an AHCCCS-approved presumptive eligibility application signed under penalty of perjury to a qualified hospital. The applicant must attest to the name(s), relationship(s), and income of all persons in the household. In addition, the applicant must provide and attest to the following information regarding each household member on whose behalf AHCCCS medical coverage is sought:
1. The individual's date of birth;
  2. Whether the individual is pregnant;
  3. Whether the individual has been determined eligible for Breast and Cervical Cancer Treatment Program, described under Article 20;
  4. Whether the individual is a former foster child, described under R9-22-1432;
  5. The U.S. citizenship status or eligible qualified alien status under A.R.S. 36-2903.03 of the individual; and
  6. The individual's permanent and mailing addresses;
  7. The individual's Arizona residency status; and
  8. Whether the individual has Medicare coverage.
- E. Presumptive eligibility begins on the date the hospital determines an individual's presumptive eligibility and ends with the earlier of:
1. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
  2. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.
- F. An individual may not be determined presumptively eligible more often than once every two years.
- G. Coverage and reimbursement of services.
1. The Administration shall provide coverage of medically necessary services described under Article 2 to persons determined eligible for HPE on a fee-for-service basis.
  2. Providers shall submit claims for services provided to persons determined eligible for HPE to the Administration as described under Article 7.
- H. A member may withdraw from HPE coverage by notifying the Administration or its designee.
- I. Upon determining an individual presumptively eligible, the qualified hospital shall:

### 36-2901. Definitions

In this article, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.
2. "Administrator" means the administrator of the Arizona health care cost containment system.
3. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 or chapter 34 of this title to provide health care to members under this article or persons under chapter 34 of this title either directly or through subcontracts with providers.
4. "Department" means the department of economic security.
5. "Director" means the director of the Arizona health care cost containment system administration.
6. "Eligible person" means any person who is:
  - (a) Any of the following:
    - (i) Defined as mandatorily or optionally eligible pursuant to title XIX of the social security act as authorized by the state plan.
    - (ii) Defined in title XIX of the social security act as an eligible pregnant woman or a woman who is less than one year postpartum with a family income that does not exceed one hundred fifty percent of the federal poverty guidelines, as a child under the age of six years and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines or as children who have not attained nineteen years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines.
    - (iii) Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.
    - (iv) Defined as eligible pursuant to section 36-2901.01.
    - (v) Defined as eligible pursuant to section 36-2901.04.
    - (vi) Defined as eligible pursuant to section 36-2901.07.
  - (b) A full-time officer or employee of this state or of a city, town or school district of this state or other person who is eligible for hospitalization and medical care under title 38, chapter 4, article 4.
  - (c) A full-time officer or employee of any county in this state or other persons authorized by the county to participate in county medical care and hospitalization programs if the county in which such officer or employee is employed has authorized participation in the system by resolution of the county board of supervisors.
  - (d) An employee of a business within this state.
  - (e) A dependent of an officer or employee who is participating in the system.
  - (f) Not enrolled in the Arizona long-term care system pursuant to article 2 of this chapter.
  - (g) Defined as eligible pursuant to section 1902(a)(10)(A)(ii)(XV) and (XVI) of title XIX of the social security act and who meets the income requirements of section 36-2929.
7. "Graduate medical education" means a program, including an approved fellowship, that prepares a physician for the independent practice of medicine by providing didactic and clinical education in a medical discipline to a

medical student who has completed a recognized undergraduate medical education program.

8. "Malice" means evil intent and outrageous, oppressive or intolerable conduct that creates a substantial risk of tremendous harm to others.

9. "Member" means an eligible person who enrolls in the system.

10. "Modified adjusted gross income" has the same meaning prescribed in 42 United States Code section 1396a(e)(14).

11. "Noncontracting provider" means a person who provides health care to members pursuant to this article but not pursuant to a subcontract with a contractor.

12. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

13. "Prepaid capitated" means a mode of payment by which a health care contractor directly delivers health care services for the duration of a contract to a maximum specified number of members based on a fixed rate per member notwithstanding:

(a) The actual number of members who receive care from the contractor.

(b) The amount of health care services provided to any member.

14. "Primary care physician" means a physician who is a family practitioner, general practitioner, pediatrician, general internist, or obstetrician or gynecologist.

15. "Primary care practitioner" means a nurse practitioner or certified nurse midwife who is certified pursuant to title 32, chapter 15 or a physician assistant who is licensed pursuant to title 32, chapter 25. This paragraph does not expand the scope of practice for nurse practitioners or certified nurse midwives as defined pursuant to title 32, chapter 15 or for physician assistants as defined pursuant to title 32, chapter 25.

16. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

17. "Section 1115 waiver" means the research and demonstration waiver granted by the United States department of health and human services.

18. "Special health care district" means a special health care district organized pursuant to title 48, chapter 31.

19. "State plan" has the same meaning prescribed in section 36-2931.

20. "System" means the Arizona health care cost containment system established by this article.

### 36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

**ARIZONA GAME AND FISH DEPARTMENT**  
Title 12, Chapter 4, Article 2



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** February 6, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** January 16, 2024

**SUBJECT: GAME AND FISH COMMISSION**  
Title 12, Chapter 4, Article 2

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### Summary

This Five-Year Review Report (5YRR) from the Game and Fish Commission (Commission) relates to fourteen (14) rules in Title 12, Chapter 4, Article 2 regarding Licenses, Permits, Stamps, and Tags. Specifically, the Commission indicates the intent of these rules is to provide greater clarity to the rules governing hunting and fishing licenses. The Commission indicates these rules establish the privileges associated with the hunting and fishing licenses, permits, stamps, and tags issued by the Department, to include exemptions from hunting and fishing license requirements.

In the prior 5YRR for these rules, which was approved by the Council in June 2019, the Commission proposed to amend the rules to remove the Department website URL and simply reference "Department website" to ensure the rule remains concise in the event the Department's URL should change. The Department also proposed amending R12-4-211 to clarify the privileges included with the lifetime license do not include permit-tags, non-permit-tags, or any stamp required to validate the lifetime license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp in response to customer comments received by the Department. The Commission indicates it completed the prior proposed course of action through a regular rulemaking which became effective on December 18, 2020.

## **Proposed Action**

In the current report, Commission proposes to amend the following rules as outlined in more detail below:

- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-205. High Achievement Scout License
- R12-4-208. Guide License
- R12-4-216. Crossbow Permit

The Commission states it anticipates requesting an exception to the rulemaking moratorium proscribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025, provided the Commission is granted permission to pursue rulemaking.

### **1. Has the agency analyzed whether the rules are authorized by statute?**

The Commission cites both general and specific statutory authority for these rules.

### **2. Summary of the agency’s economic impact comparison and identification of stakeholders:**

The Commission states that the rulemakings resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking packages approved on December 1, 2020, and July 2, 2019. The Commission anticipated these rulemakings to benefit persons regulated by the rules, members of the public, the Arizona Game and Fish Department (Department), and licensed taxidermists by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rules where practical, by complying with statute, and through a reduced fee for licensed taxidermists.

The Commission anticipates R12-4-202, which was last amended through exempt rulemaking made effective September 26, 2022, will benefit persons regulated by the rule by creating the reduced-fee Purple Heart Medal license. The rule will not impose increased costs for other state agencies, political subdivisions, or businesses, and will not significantly impact public or private employment and revenue, or State revenues or the general fund.

### **3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission states that the rules allow for the adoption of updated business practices and represent the most cost-effective and efficient method of fulfilling the Commission’s and

Department's responsibilities and impose only those requirements that are necessary to meet the Commission's objectives. The Commission/Department believes that the rules impose the least burdens and costs to persons regulated by the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Commission indicates it received several comments related to these rules. The comments and the Commission's response to those comments are summarized in Section 7 of the Commission's report.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Commission indicates the rules are generally clear, concise, and understandable except for the following:

- **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp:** The rule requires a person to purchase a stamp in order to take band-tailed pigeons, moorhen, coots, doves, ducks, geese, snipe, or swans. The Department recommends amending the rule to replace the term "moorhen" with "gallinules" as this is the current reference for the group of legal species that may be found in Arizona.
- **R12-4-205. High Achievement Scout License:** The "Boy Scouts of America" program where young men could earn an Eagle Scout has been rebranded to "Scouts BSA" to include both male and female participants. The Department recommends amending the rule to reflect the organization's current program.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Commission indicates the rules are generally clear, concise, and understandable except for the following:

- **R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License:** Like the lifetime licenses issued under R12-4-211 (Lifetime License), the permanent (lifetime) Disabled Veteran's License is valid for the person's lifetime and continues to remain valid if the license holder moves out-of-state. The out-of-state license holder must pay the nonresident fee when purchasing any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona, but the hunt- permit tag issuance limitations for nonresident permit holders do not apply to a Disabled Veteran's License holder. The Department recommends amending the rule to clarify the Disabled Veteran's License (lifetime license) benefits and limitations to increase consistency between rules within Article 2. This change is in response to customer comments received by the Department.
- **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp:** Internal discussions indicate the U.S. Fish and Wildlife Service is considering amending the federal regulation to offer a tiered stamp structure to increase

participation in migratory game bird hunting. The tiered structure will offer hunters the option to select either a 'standard' waterfowl season, with set harvest limits on particular species, or a 'splash' waterfowl season that offers a reduced harvest limit but allows hunters to harvest any legal waterfowl species to meet that limit. The Department will monitor the proposed regulation and may amend the rule to reflect the tiered structure if the proposed regulation is adopted in the future. In addition, the U.S. Fish and Wildlife Service is exploring the concept of issuing e-stamps that are valid the entire waterfowl season rather than a hard copy stamp a hunter has to carry with them, in addition to their hunting license. The Department will monitor the proposed regulation and may amend the rule to reflect the e-stamp if the proposed regulation is adopted in the future.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Commission indicates the rules are generally effective in achieving its objectives except for the following:

- **R12-4-216. Crossbow Permit:** The difference between a crossbow and the typically used compound bow is that a crossbow can be drawn, locked into place, and stabilized on an object when firing. From January 1, 1996 through January 2, 2015, the Department offered only permanent (lifetime) crossbow permits to persons with a permanent disability of at least 90% impairment of function of one arm. In response to customer comments regarding the overly restrictive eligibility requirements and the need for a temporary crossbow permit, on January 3, 2015, the Commission established a temporary crossbow permit that was valid for the time-frame specified by the healthcare professional and greatly expanded the eligibility criteria.

The Department relies on the medical health professional to determine whether the applicant's medical condition is temporary or permanent. No specific testing is required by the medical health professional conducting the evaluation and no documentation of the evaluation is required to be submitted with the application for the crossbow permit. The only requirement is a general diagnosis as to whether the applicant's disability is permanent or temporary and a signature from the medical health professional. As a result, some applicants were receiving the permit who should not have otherwise qualified, while other applicants were denied permits.

The Department has heard the permits are too easy to obtain and the continuing steady rise in the number of permits being issued each year are an indication that this is a possibility. The Department has also heard the number of crossbow permits on the landscape has negatively impacted archery-only hunts but this remains to be proven.

The Department believes it necessary to more fully evaluate the challenges resulting from the ability to use these devices during an archery-only hunt and recommends conducting public outreach activities (i.e., public meetings, webinars, surveys, working groups, etc.) to evaluate the current crossbow permit eligibility requirements and make recommendations to increase consistency in how eligibility is established and permits are

issued; and increase equity between crossbow and archery hunters in the field during an archery-only hunt. Ultimately, the Department's goal is to establish a standardized evaluation process and provide equal opportunity to all disabled individuals interested in obtaining a crossbow permit. The information gained from this evaluation will help shape future revisions to the crossbow permit rule.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Commission indicates the rules are current enforced as written except for the following:

- **R12-4-208. Guide License:** Under subsection (T), a licensed guide is required to report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder. In addition, most guides use support personnel (who are not licensed guides) to assist the guide in locating an animal. The Department was recently involved with a lengthy criminal trial, civil lawsuit, and Office of Administrative Hearings (OAH) hearing with a licensed guide and a friend of the guide who operated a powered parachute plane. The guide accepted information through text and phone calls regarding wildlife locations, herd size, horn size of bighorn sheep, and various essential information from the friend who operated the powered parachute plane to locate wildlife during an open big game season in violation of R12-4-319. The Department was successful in prosecuting the friend of the guide for locating wildlife during a big game season and the OAH hearing regarding the guide accepting this information in violation of R12-4-319(B) and failing to report this information to the Department in violation of R12-4-208(T)(2)(d), but it was a difficult hearing. The argument used by the defense was the guide did not "personally witness the violation." The Department recommends amending the rule to replace "personally witnessed the violation" with "knew or should have known of the violation" to increase the ability to enforce the rule. In addition, internal discussions indicate guides and their assistants are using e-bikes to enter areas that are closed to motorized travel. This activity is unlawful and damages wildlife habitat, some of which may never recover. The Department recommends evaluating measures, to include rulemaking, that will reduce the number of occurrences. In addition, a person whose hunting and fishing privileges are revoked is prohibited from obtaining a guide license while under revocation. A guide whose license is revoked is also unable to assist a person in locating or taking wildlife. The Department is aware of instances where a revoked guide will hire another licensed guide to take their clients on a guided hunt, thus usurping the Commission-ordered revocation while collecting guiding fees from the customer. The Department recommends amending the rule to prohibit a licensed guide from acting as an agent for a revoked guide: "A guide license holder shall not aid, assist, serve as an agent or represent a person whose privilege to take wildlife or guide has been revoked pursuant to A.R.S. §§ 17-340 or 17-362."
- **R12-4-216. Crossbow Permit:** In 2019, the Commission amended the rule to allow a person issued a permanent or temporary crossbow permit to use a pneumatic weapon that discharges an arrow or bolt during an Archery-only hunt. In a subsequent rulemaking, this language was deleted in error. The intent of the amendment was to allow a person

with a permanent disability to use a pneumatic weapon during an Archery-only hunt. To align the rule with the original intent, the Department recommends amending the rule to allow a CHAMP holder who also possesses a Department-issued crossbow permit to use a pneumatic weapon that discharges an arrow or bolt during an Archery-only hunt.

**9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Commission indicates federal regulation 50 C.F.R. Part 20 is applicable to the subject of rule R12-4-203 (National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp). 50 C.F.R. Part 20 establishes migratory bird hunting stamp requirements as they apply to the take, possession, and transport of migratory birds and are in addition to the provisions of the Migratory Bird Hunting Stamp Act of 1934. The Commission indicates this rule is not more stringent than corresponding federal law.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Commission indicates the follow rules require the issuance of a “general permit” as defined under A.R.S. § 41-1001(11) and are in compliance with A.R.S. § 41-1037:

- **R12-4-201. Pioneer License**
- **R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License**
- **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp**
- **R12-4-204. Taxidermy Registration; Register**
- **R12-4-205. High Achievement Scout License**
- **R12-4-206. General Hunting License; Exemption**
- **R12-4-207. General Fishing License; Exemption**
- **R12-4-208. Guide License**
- **R12-4-210. Combination Hunting and Fishing License; Exemption**
- **R12-4-211. Lifetime License; Benefactor License**
- **R12-4-213. Hunt Permit-tags and Nonpermit-tags**
- **R12-4-215. Youth Group Two-day Fishing License**
- **R12-4-216. Crossbow Permit**
- **R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**

## **11. Conclusion**

This 5YRR from the Commission relates to fourteen (14) rules in Title 12, Chapter 4, Article 2 regarding Licenses, Permits, Stamps, and Tags. Specifically, the Commission indicates the intent of these rules is to provide greater clarity to the rules governing hunting and fishing licenses. Commission proposes to amend the following rules as outlined above to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement:

- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-205. High Achievement Scout License
- R12-4-208. Guide License
- R12-4-216. Crossbow Permit

The Commission states it anticipates requesting an exception to the rulemaking moratorium proscribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025, provided the Commission is granted permission to pursue rulemaking.

Council staff recommends approval of this report.



September 8, 2023

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE:** Arizona Game and Fish Commission, 12 A.A.C. 4, Article 2, Five Year Review Report

Dear Nicole Sornsin:

Please find enclosed the Five-year Review Report of the Arizona Game and Fish Commission for 12 A.A.C. 4, Article 2 Licenses; Permits; Stamps; Tags which is due on December 31, 2023.

The Arizona Game and Fish Commission hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Celeste Cook at (623) 236-7390 or [Ccook@azgfd.gov](mailto:Ccook@azgfd.gov).

Sincerely,

*Anthony Guiles* (for)

Ty E. Gray, Director

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**5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086**

**GOVERNOR:** KATIE HOBBS **COMMISSIONERS:** CHAIRMAN TODD C. GEILER, PRESCOTT | CLAY HERNANDEZ, TUCSON | MARSHA PETRIE SUE, SCOTTSDALE  
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**ARIZONA GAME AND FISH COMMISSION**  
**ARTICLE 2. LICENSES: PERMITS: STAMPS; TAGS**  
**FIVE-YEAR REVIEW REPORT**

**1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

For all rules within Article 2, the authorizing statute is A.R.S. § 17-231(A)(1).		
For each rule within Article 2, the implementing statutes are as follows:		
R12-4-201.	Pioneer License	• A.R.S. §§ 17-33(C)(1), and 41-1005
R12-4-202.	Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License	• A.R.S. §§ 17-33(C)(1), and 41-1005
R12-4-203.	National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(7), 17-235, 17-333, 17-333.03, and 41-1005
R12-4-204.	Taxidermy Registration; Register	• A.R.S. §§ 17-101, 17-102, 17-333, 17-335.01, 17-363, and 41-1005
R12-4-205.	High Achievement Scout License	• A.R.S. §§ 17-333(C)(5) and 41-1005
R12-4-206.	General Hunting License; Exemption	• A.R.S. §§ 17-333 and 41-1005
R12-4-207.	General Fishing License; Exemption	• A.R.S. §§ 17-333 and 41-1005
R12-4-208.	Guide License	• A.R.S. §§ 17-101, 17-245, 17-333, 17-340, 17-362, and 41-1005
R12-4-209.	Repealed	
R12-4-210.	Combination Hunting and Fishing License; Exemption	• A.R.S. §§ 17-333 and 41-1005
R12-4-211.	Lifetime License; Benefactor License	• A.R.S. §§ 17-333, 17-335.01, and 41-1005
R12-4-212.	Repealed	
R12-4-213.	Hunt Permit-tags and Nonpermit-tags	• A.R.S. §§ 17-333 and 41-1005
R12-4-214.	Repealed	
R12-4-215.	Youth Group Two-day Fishing License	• A.R.S. §§ 17-333 and 41-1005
R12-4-216.	Crossbow Permit	• A.R.S. §§ 17-102, 17-231(A)(3), 17-301(D)(2), and 41-1005
R12-4-217.	Challenged Hunters Access/Mobility Permit (CHAMP)	• A.R.S. §§ 17-102, 17-231(A)(3), 17-301(B), and 41-1005
R12-4-218.	Repealed	
R12-4-219.	Renumbered	
R12-4-220.	Repealed	

**2. Objective of the rule, including the purpose for the existence of the rule.**

**R12-4-201. Pioneer License:** The objective of the rule is to establish application requirements and hunting and fishing privileges for the pioneer license. The rule was adopted to comply with the statutory mandate under A.R.S. § 17-333(C)(1). This license may be issued to a person who is seventy years of age or older and who has been a resident of this state for twenty-five or more consecutive years immediately preceding application for the license. The pioneer license is valid for the lifetime of the licensee and does not require renewal. The complimentary combination hunting and fishing license is valid state-wide for all game species, with the proper tags where applicable, and the tale of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges.

- The complimentary pioneer license is valid for the lifetime of the licensee.

- The Department issues an average of 4,529 complimentary pioneer licenses on an annual basis.
- The pioneer license is free of charge to eligible applicants.

**R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License:** The objective of the rule is to establish eligibility, application requirements, and hunting and fishing privileges for the complimentary licenses that are issued to disabled veterans and Purple Heart Medal recipients. The rule was adopted to comply with the statutory mandate under A.R.S. § 17-333(C)(2) and (3). The Department offers three types of veterans' licenses: a complimentary license available to veterans who are receiving compensation from the United States government for a service connected disability rated as 100% disabling, a 25% reduced fee license to a veteran who is receiving such compensation for a service connected disability of any rating, and a 50% reduced-fee license to a person who is a bona fide recipient of a Purple Heart Medal. Under A.R.S. § 17-333(C)(2) and (3), a person applying for one of these licenses must have been a resident of Arizona for at least one year immediately preceding application. The disabled veteran's license and reduced-fee disabled veteran and Purple Heart Medal grant all of the hunting and fishing privileges of a combination hunting and fishing license.

- The complimentary disabled veteran's license is either valid for the lifetime of the licensee and does not require renewal, or for three years if the certification or benefits letter indicates the veteran's disability status will be re-examined in a three-year period.
  - The Department issues an average of 769 complimentary disabled veteran's licenses on an annual basis.
- The reduced fee veteran's licenses are valid for one year from the date of purchase or activation, when activated no more than 60 days after initial purchase.
  - The Department issued approximately 108 reduced-fee disabled veteran's licenses since the rule was adopted on August 21, 2021.
    - The fee for the reduced-fee disabled veteran's license is \$42.
  - The Department issued approximately 8 Purple Heart Medal licenses since the rule was adopted on September 26, 2022.
    - The fee for the reduced-fee Purple Heart Medal license is \$28.

**R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp:** The objective of the rule is to establish requirements for the application and use of the Arizona migratory bird stamp, which covers the take of waterfowl and migratory game birds. The Arizona stamp is separate from the Federal waterfowl stamp (also known as "Duck stamp"), which is required when a person wants to hunt waterfowl in Arizona. The stamp enables the Department to obtain hunter participation and harvest data for migratory game birds in compliance with the requirements of the federally mandated National Harvest Information Program, which is administered by the United States Fish and Wildlife Service (USFWS).

- The State waterfowl and migratory bird stamp is valid from July 1 through June 30 of each year.
- The Department issues an average of 69,588 Arizona Migratory Bird Stamps on an annual basis.

- The fee for the Arizona Migratory Bird stamp is \$5.

**R12-4-204. Taxidermy Registration; Register:** The objective of the rule is to establish the requirements necessary to allow a person to engage in the business of taxidermy for hire. A taxidermy registration authorizes a person to mount, refurbish, maintain, restore, or preserve wildlife as defined under A.R.S. § 17-101. The rule was adopted to comply with the requirements established under A.R.S. § 17-363.

- The taxidermy registration expires on December 31 each year.
- The Department recently implemented an online registration and reporting process which has skewed the registration data. It is believed the number of registered taxidermists has increased since the Department went from issuing a license to a registration and the annual fee was lowered \$50.
- The fee for the taxidermy registration is \$100.

**R12-4-205. High Achievement Scout License:** The objective of the rule is to establish application requirements and hunting and fishing privileges for the high achievement scout license. The combination hunting and fishing license is offered to a resident of this state who is a member of the Boy Scouts of America "Scouts BSA" program and who has attained the rank of Eagle Scout or a member of the Girl Scouts of the U.S.A. who has received the Gold Award provided the scout is under 21 years of age. The rule was adopted to comply with amendments made to A.R.S. § 17-336(B), which honored the 100th anniversary of the Boy Scouts of America.

- The high achievement scout license is valid for one year from the date of purchase or activation, when activated no more than 60 days after initial purchase.
- The Department issues an average of 61 high achievement scout licenses on an annual basis.
- The fee for the high achievement scout license is \$5.

**R12-4-206. General Hunting License; Exemption:** The objective of the rule is to establish application requirements and hunting privileges for the general hunting license. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The resident general hunting license is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The general hunting license is also valid for the take of migratory birds when the person possesses the applicable migratory bird stamps, and for big game when the person possesses the applicable big game tag. The general hunting license is not available to nonresidents. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; the applicant may choose the license start date when purchasing the license online or at a Department office, provided that date is in the future and is no more than 60 calendar days from the date of purchase. The general license must be valid on the last day of the application deadline for the big game draw or last day of an extended deadline. A person under 10 years of age may hunt wildlife other than big game without a license, when accompanied by a person, 18 years of age or older, who

possesses a valid Arizona hunting license.

- The general hunting license is valid for one year from the date of purchase or activation, when activated no more than 60 days after initial purchase.
- The Department issues an average of 40,643 general hunting licenses on an annual basis.
- The fee for the resident hunting license is \$37.

**R12-4-207. General Fishing License; Exemption:** The objective of the rule is to establish application requirements and hunting privileges for the general fishing license. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The resident and nonresident general fishing license is valid for the take of aquatic wildlife, includes trout, community, and Colorado River fishing privileges and allows simultaneous fishing as defined under R12-4-301. The license is valid for a one-year period as follows: when the license is purchased from a license dealer, as defined under R12-4-101, the license is valid for one-year from the date of purchase; and when the applicant purchases the license online or at a Department office, the applicant may choose their start date, provided that date is in the future and is no more than 60 calendar days from the date of purchase. A person under 10 years of age may fish without a fishing license, when accompanied by a person, 18 years of age or older, who possesses a valid Arizona fishing license.

- The general fishing license is valid for one year from the date of purchase or activation, when activated no more than 60 days after initial purchase.
- On an annual basis, the Department issues approximately:
  - 158,846 resident fishing licenses, and
  - 24,182 nonresident fishing licenses.
- The fees for the general fishing licenses are as follows:
  - Resident general fishing license - \$37, and
  - Nonresident general fishing license - \$55.

**R12-4-208. Guide License:** The objective of the rule is to establish the application, reporting, and guiding requirements for those persons who provide commercial guiding services in Arizona. The rule was adopted to clarify what a guide may legally do while aiding or assisting a client in the taking of wildlife and ensure compliance with wildlife laws and rules.

- The guide license expires on December 31 each year.
- The Department issues an average of 1072 guide licenses on an annual basis
- The fee for the resident and nonresident guide license is \$300.

**R12-4-210. Combination Hunting and Fishing License; Exemption:** The rule establishes the requirements and privileges of both the resident and nonresident hunting and fishing combination licenses. The rule was adopted to

ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. The combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges. The combination hunting and fishing license is also valid for the take of migratory birds when the person possesses the applicable migratory bird stamp(s), and for big game when the person possesses the applicable big game tag. The Commission established three variations of the combination hunting and fishing license: a resident and nonresident one-year combination hunting and fishing license available to persons 18 years of age and older, resident and nonresident one-year youth combination hunting and fishing license available to persons age 10 through 17, and resident and nonresident short-term combination hunting and fishing license available to persons age 18 and older. The short-term license is valid for one 24-hour period from midnight to midnight. The short-term combination hunting and fishing license is the only short-term license offered by the Department and provides the same privileges as the one-year combination hunting and fishing license, except that it is not valid for the take of big game animals. The Commission does not limit the number of short-term licenses a person may purchase in any given year or require a person to purchase consecutive short-term licenses, however, the Department will offer an annual license when the cost of short-term licenses being purchased meets or exceeds the price of the applicable combination hunting and fishing license. A person under 10 years of age may hunt wildlife other than big game without a license, when accompanied by a person, 18 years of age or older, who possesses a valid Arizona hunting license. The only hunting license the Commission offers a nonresident is the combination hunting and fishing license.

- The combination hunting and fishing license is valid for one year from the date of purchase or activation, when activated no more than 60 days after initial purchase.
  - On an annual basis, the Department issues approximately:
    - 67,230 resident youth combination hunting and fishing licenses,
    - 113,381 resident combination hunting and fishing licenses,
    - 8,732 nonresident youth combination hunting and fishing licenses, and
    - 40,397 nonresident combination hunting and fishing licenses.
  - The fee for the combination hunting and fishing licenses are as follows:
    - Resident and nonresident youth combination hunting and fishing license - \$5,
    - Resident combination hunting and fishing license - \$57, and
    - Nonresident combination hunting and fishing license - \$160.
- The short-term combination hunting and fishing license is valid for one 24-hour period from midnight to midnight.
  - On an annual basis, the Department issues approximately:
    - 18,555 resident short-term combination hunting and fishing licenses, and
    - 33,331 nonresident short-term combination hunting and fishing licenses.
  - The fee for the short-term combination hunting and fishing licenses are as follows:
    - Resident combination hunting and fishing license - \$15, and

- Nonresident combination hunting and fishing license - \$20.

**R12-4-211. Lifetime License; Benefactor License:** The objective of the rule is to establish the hunting and/or fishing privileges for the three lifetime licenses, application requirements, and fees for lifetime licenses. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Arizona's lifetime general hunting and fishing license program provides a unique opportunity for resident sportsmen and sportswomen to participate in the long-term funding of Arizona's Wildlife Conservation programs. The dollars derived from the sale of these special licenses are deposited into the established Arizona Wildlife Endowment Fund from which only the interest accrued will be used for management programs. The license is a great value; the initial investment pays off in 18 years even when purchasing the costliest lifetime license: combination license for a person aged 14 to 29 for \$1029. The purchaser of a lifetime license is entitled to hunt and fish (as applicable) in Arizona for their lifetime, even if the license holder moves out-of-state. In addition, a lifetime license holder who moved out-of-state is not subject to the limits placed on nonresident permit-tags. The lifetime hunting license is valid for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. The lifetime fishing license is valid for the take of aquatic wildlife, includes trout, community, and Colorado River fishing privileges and allows simultaneous fishing as defined under R12-4-301. The lifetime combination hunting and fishing license is valid state-wide for the take of small game, fur-bearing animals, predatory animals, nongame animals, and upland game and the take of all aquatic wildlife, allows simultaneous fishing, and includes community program fishing privileges. The benefactor license is an additional type of lifetime license and is similar to the lifetime hunting and fishing license, except the person purchasing the license pays an additional amount that is considered a tax-deductible donation to the state for the continued management, protection and conservation of the state's wildlife. The lifetime hunting license, combination hunting and fishing license, and the benefactor license are also valid for the take of migratory birds when the person possesses the applicable migratory bird stamp(s), and for big game when the person possesses the applicable big game tag.

- On an annual basis, the Department issues:
  - 85 lifetime fishing licenses,
  - 211 lifetime hunting licenses, and
  - 392 lifetime combination hunting and fishing licenses, and
  - 11 lifetime benefactor combination hunting and fishing licenses.
- Fees for the lifetime fishing, lifetime hunting, and lifetime combination licenses are based on the applicant's age as follows:
  - Age 0 through 13 years is 17 times the applicable annual license fee,
  - Age 14 through 29 years is 18 times the applicable annual license fee,
  - Age 30 through 44 years is 16 times the applicable annual license fee,
  - Age 45 through 61 years is 15 times the applicable annual license fee, and
  - Age 62 and older is 8 times the applicable annual license fee.

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

- Fee for the lifetime benefactor combination hunting and fishing license is \$1,500. The difference between the cost of the lifetime combination hunting and fishing license and the cost of the benefactor combination hunting and fishing license is considered a donation and may be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations.

**R12-4-213. Hunt Permit-tags and Nonpermit-tags:** The objective of the rule is to establish requirements to validate a license for the taking of a big game animal or any other wildlife requiring a valid tag. The rule was adopted to establish permit-tag and nonpermit-tag requirements. Tags are issued by the season and validate the hunting or combination hunting and fishing license that is valid for the same season; the Commission believed the rule was necessary.

**R12-4-215. Youth Group Two-day Fishing License:** The objective of the rule is to establish youth group two-day fishing license privileges and requirements by rule to comply with the recent statutory amendments. The rule was adopted to ensure compliance with statutory amendments resulting from the Fifty-first Legislature, 1st Regular Session, which amended statutes within Title 17 to authorize the Commission to establish license, permit, tag, and stamp fees by rule. Youth group two-day fishing license privileges were previously prescribed under A.R.S. § 17-333. The youth group two-day fishing license is issued to a nonprofit organization that sponsors adult supervised activities for groups of no more than 25 youth, ages 10 through 17. The youth group two-day fishing license is valid for taking all aquatic wildlife.

- The Department issues an average of 39 youth group two-day fishing licenses on an annual basis.
- The fee for the youth group two-day fishing license is \$25.

**R12-4-216. Crossbow Permit:** The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the crossbow permit. The permit allows a person who cannot draw and hold a bow to use a crossbow during an archery-only hunt. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting.

- The crossbow permits are valid as follows:
  - The permanent crossbow permit is valid for the permit holder's lifetime.
  - The temporary crossbow permit is valid for one-year from the date the medical certification portion of the application is signed by the healthcare provider.
- On an annual basis, the Department issues approximately:
  - 1014 permanent crossbow permits, and
  - 208 temporary crossbow permits.

**R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP):** The objective of the rule is to establish eligibility requirements, conditions, and restrictions for the Challenged Hunter Access/Mobility Permit (CHAMP). The permit allows a disabled person to perform activities while hunting normally prohibited under

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

A.R.S. § 17-301. The rule was adopted to provide a mechanism that afforded persons with a disability the opportunity to participate in hunting.

- The CHAMP is free of charge to eligible applicants.
- The Department issues an average of 627 CHAMPs on an annual basis.

### 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes. In addition, comments received since the last rule review was conducted are reviewed and considered. Comments indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective. The Department believes the following rules are effective in achieving the objectives identified above:

- R12-4-201. Pioneer License
- R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)
- **R12-4-216. Crossbow Permit:** The difference between a crossbow and the typically used compound bow is that a crossbow can be drawn, locked into place, and stabilized on an object when firing. From January 1, 1996 through January 2, 2015, the Department offered only permanent (lifetime) crossbow permits to persons with a permanent disability of at least 90% impairment of function of one arm. In response to customer comments regarding the overly restrictive eligibility requirements and the need for a temporary crossbow permit, on January 3, 2015, the Commission established a temporary crossbow permit that was valid for the time-frame specified by the healthcare professional and greatly expanded the eligibility criteria.

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

The Department relies on the medical health professional to determine whether the applicant's medical condition is temporary or permanent. No specific testing is required by the medical health professional conducting the evaluation and no documentation of the evaluation is required to be submitted with the application for the crossbow permit. The only requirement is a general diagnosis as to whether the applicant's disability is permanent or temporary and a signature from the medical health professional. As a result, some applicants were receiving the permit who should not have otherwise qualified, while other applicants were denied permits.

The Department has heard the permits are too easy to obtain and the continuing steady rise in the number of permits being issued each year are an indication that this is a possibility. The Department has also heard the number of crossbow permits on the landscape has negatively impacted archery-only hunts but this remains to be proven.

The Department believes it necessary to more fully evaluate the challenges resulting from the ability to use these devices during an archery-only hunt and recommends conducting public outreach activities (i.e., public meetings, webinars, surveys, working groups, etc.) to evaluate the current crossbow permit eligibility requirements and make recommendations to increase consistency in how eligibility is established and permits are issued; and increase equity between crossbow and archery hunters in the field during an archery-only hunt. Ultimately, the Department's goal is to establish a standardized evaluation process and provide equal opportunity to all disabled individuals interested in obtaining a crossbow permit. The information gained from this evaluation will help shape future revisions to the crossbow permit rule.

#### **4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The Department believes the following rules are consistent with regulations, statutes, and rules; regulations, statutes, and rules used to determine consistency include 50 C.F.R. Part 20, A.R.S. § Title 17 and 12 A.A.C. Chapter 4:

- R12-4-201. Pioneer License
- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

Overall the following rules are not consistent with or are in conflict with statutes and rules; the Department proposes to increase their consistency with statutes and rules as described below:

- **R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License:** Like the lifetime licenses issued under R12-4-211 (Lifetime License), the permanent (lifetime) Disabled Veteran’s License is valid for the person’s lifetime and continues to remain valid if the license holder moves out-of-state. The out-of-state license holder must pay the nonresident fee when purchasing any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in Arizona, but the hunt-permit tag issuance limitations for nonresident permit holders do not apply to a Disabled Veteran’s License holder. The Department recommends amending the rule to clarify the Disabled Veteran’s License (lifetime license) benefits and limitations to increase consistency between rules within Article 2. This change is in response to customer comments received by the Department.
- **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp:** Internal discussions indicate the U.S. Fish and Wildlife Service is considering amending the federal regulation to offer a tiered stamp structure to increase participation in migratory game bird hunting. The tiered structure will offer hunters the option to select either a ‘standard’ waterfowl season, with set harvest limits on particular species, or a ‘splash’ waterfowl season that offers a reduced harvest limit but allows hunters to harvest any legal waterfowl species to meet that limit. The Department will monitor the proposed regulation and may amend the rule to reflect the tiered structure if the proposed regulation is adopted in the future. In addition, the U.S. Fish and Wildlife Service is exploring the concept of issuing e-stamps that are valid the entire waterfowl season rather than a hard copy stamp a hunter has to carry with them, in addition to their hunting license. The Department will monitor the proposed regulation and may amend the rule to reflect the e-stamp if the proposed regulation is adopted in the future.

### 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The following rules are currently being enforced. Department employees can inspect documentation for rule compliance. Officers can check for rule compliance when routinely patrolling the lands and waterways of Arizona, and issue warning orders or citations. To the extent that the Department is aware, the Department believes there are no problems with the enforcement of the following rules:

- R12-4-201. Pioneer License
- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

### License

- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

The Department proposes to increase the ability to enforce the following rules as indicated:

- **R12-4-208. Guide License:** Under subsection (T), a licensed guide is required to report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder. In addition, most guides use support personnel (who are not licensed guides) to assist the guide in locating an animal. The Department was recently involved with a lengthy criminal trial, civil lawsuit, and Office of Administrative Hearings (OAH) hearing with a licensed guide and a friend of the guide who operated a powered parachute plane. The guide accepted information through text and phone calls regarding wildlife locations, herd size, horn size of bighorn sheep, and various essential information from the friend who operated the powered parachute plane to locate wildlife during an open big game season in violation of R12-4-319. The Department was successful in prosecuting the friend of the guide for locating wildlife during a big game season and the OAH hearing regarding the guide accepting this information in violation of R12-4-319(B) and failing to report this information to the Department in violation of R12-4-208(T)(2)(d), but it was a difficult hearing. The argument used by the defense was the guide did not “personally witness the violation.” The Department recommends amending the rule to replace "personally witnessed the violation" with “knew or should have known of the violation” to increase the ability to enforce the rule. In addition, internal discussions indicate guides and their assistants are using e-bikes to enter areas that are closed to motorized travel. This activity is unlawful and damages wildlife habitat, some of which may never recover. The Department recommends evaluating measures, to include rulemaking, that will reduce the number of occurrences. In addition, a person whose hunting and fishing privileges are revoked is prohibited from obtaining a guide license while under revocation. A guide whose license is revoked is also unable to assist a person in locating or taking wildlife. The Department is aware of instances where a revoked guide will hire another licensed guide to take their clients on a guided hunt, thus usurping the Commission-ordered revocation while collecting guiding fees from the customer. The Department recommends amending the rule to prohibit a licensed guide from acting as an agent for a revoked guide: “A guide license holder shall not aid, assist, serve as an agent or represent a person whose privilege to take wildlife or guide has been revoked

pursuant to A.R.S. §§ 17-340 or 17-362.”

- **R12-4-216. Crossbow Permit:** In 2019, the Commission amended the rule to allow a person issued a permanent or temporary crossbow permit to use a pneumatic weapon that discharges an arrow or bolt during an Archery-only hunt. In a subsequent rulemaking, this language was deleted in error. The intent of the amendment was to allow a person with a permanent disability to use a pneumatic weapon during an Archery-only hunt. To align the rule with the original intent, the Department recommends amending the rule to allow a CHAMP holder who also possesses a Department-issued crossbow permit to use a pneumatic weapon that discharges an arrow or bolt during an Archery-only hunt.

#### 6. Clarity, conciseness, and understandability of the rule.

The Department believes the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

- R12-4-201. Pioneer License
- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License
- R12-4-204. Taxidermy Registration; Register
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

Overall, the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice, however, the Department proposes to further clarify the following rules as indicated:

- **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp:** The rule requires a person to purchase a stamp in order to take band-tailed pigeons, moorhen, coots, doves, ducks, geese, snipe, or swans. The Department recommends amending the rule to replace the term “moorhen” with “gallinules” as this is the current reference for the group of legal species that may be found in Arizona.
- **R12-4-205. High Achievement Scout License:** The “Boy Scouts of America” program where young men could earn an Eagle Scout has been rebranded to “Scouts BSA” to include both male and female participants. The Department recommends amending the rule to reflect the organization’s current program.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written comments for the following rules.

- R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

The Department received the following comments relating to rules within Article 2. Licenses; Permits; Stamps; Tags:

**R12-4-201. Pioneer License:**

*Comments suggest the Commission amend the rule to reduce the age and years of continuous residency requirement.*

**Agency Response:** The age and residency requirements are established in statute, see A.R.S. § 17-333(C)(1). A legislative amendment is required before the Commission is able to amend the rule as suggested.

*Comments suggest the Pioneer license also include crossbow permit privileges which allow a person to use a crossbow during an archery-only hunt.*

**Agency Response:** The Department disagrees with this suggestion. The Crossbow Permit has specific requirements related to medical conditions that make it difficult for a person to draw and hold a bow; age and residency are not considered. However, a Pioneer License holder who does not apply for and obtain a crossbow permit may still use a crossbow during the general season.

**R12-4-206. General Hunting License; Exemption**

**R12-4-207. General Fishing License; Exemption**

*Comments suggest the Department offer a reduced fee hunting and/or fishing license to seniors, disabled persons,*

*and veterans (other than the 100% disabled veteran's license).*

**Agency Response:** License, permit, stamp, and tag fees are set, through the Commission, utilizing a public process. The current fee structure serves the best interest of the public and the Department for preserving and protecting Arizona's wildlife. In 2014, the rules were amended to offer licenses that are valid for one-year from the date of purchase. Previously, most licenses were valid for the calendar year (January 1 through December 31), which gave the perception that the license had less value when purchased later in the year. The Department and Commission are currently reviewing requests and contemplating the best way to offer benefits to seniors and maintain the critical funding necessary to properly manage the state's wildlife. The Commission will again seek public input before making any change to the current license structure or fees. It is important to note, sportsmen are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in to other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

*Comments suggest the Commission establish a fishing license that would allow two people to use one license and/or allow a family to share one pole, one license.*

**Agency Response:** The Commission sets bag limits based on an individual person; there are no "party" bag limits. This would also be very difficult to enforce.

**R12-4-208. Guide License:**

*Comments suggest the Commission should decrease or limit the number of guides in Arizona.*

**Agency Response:** The Department has no interest in reducing or limiting the number of licensed guides in the State. Guides provide a necessary service and can benefit persons who are unfamiliar with the territory or the type of game they're after. Guides can be important to hunters and/or anglers who do not have the ability or resources to have a safe and legal trip.

*Comments suggest the Commission should limit the number of assistants/scouts a guide can employ in Arizona.*

**Agency Response:** Under A.R.S. § 41-1093.01, State agencies are restricted to making only those occupational regulations that are demonstrated to be necessary to specifically fulfill a public health, safety, or welfare concern. The Department has no interest in limiting the number of assistants/scouts a particular guide may use.

**R12-4-210. Combination Hunting and Fishing License; Exemption:**

*Comments suggest the Commission consider issuing a complimentary hunting and fishing license to its employees. The intent is that Game and Fish employees could be "hunt/fish license ambassadors" to the general public. A lifetime license could be issued to an employee who has been with the Department a significant amount of time, for example ten to fifteen years of service.*

**Agency Response:** The Department recommends exploring the ability to issue a complimentary license to

Department employees.

*Comments suggest the Commission amend the rule to allow military spouses to maintain their Arizona resident status throughout the spouse's active duty military career while stationed at duty station outside of Arizona.*

**Agency Response:** Resident, nonresident, and domicile are defined in statute. A legislative amendment is required before the Commission may implement this suggestion.

**R12-4-216. Crossbow Permit:**

*Comments suggest the Commission amend the rule to establish the crossbow permit is only valid for a particular season.*

**Agency Response:** The Commission established a temporary crossbow permit in response to customer comments, however, internal discussions indicate the perceived abuse of the temporary crossbow permit is cause for concern. Requiring a person with a permanent disability to reapply for a crossbow permit after every season is not cost effective for the Department and imposes additional costs and burdens to persons regulated by the rule. However, the Department agrees the current process allowing the medical professional to establish the time-frame has resulted in inconsistencies in the way these permits are issued. The Department intends to benchmark with other states and evaluate options to determine whether a process or rule change is required.

*Comments suggest the Commission limit persons who possess a crossbow permit to participating in handgun, archery, and muzzleloader (HAM) hunts, only.*

**Agency Response:** The Department encourages people to hunt with all applicable weapon types in a safe and legal manner and does not intend to restrict crossbow permit holders to HAM hunts.

*Comments suggest the crossbow permit is too easy to obtain and the Commission should repeal the rule so a crossbow cannot be used during an archery-only hunt.*

**Agency Response:** The Department strongly supports offering/providing hunting opportunities to persons with disabilities. The crossbow permit application requires the healthcare provider to certify the person named on the application meets eligibility criteria.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by the Governor's Regulatory Review Council (G.R.R.C.) on December 1, 2020.

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

- R12-4-201. Pioneer License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

The Commission anticipated the rulemaking would benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, and reducing the burden on persons regulated by the rule where practical.

**R12-4-204. Taxidermy Registration; Register:** The last rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by Governor's Regulatory Review Council (G.R.R.C.) on July 2, 2019.

The Commission anticipated the rulemaking would benefit the Department through compliance with statute and benefit currently licensed taxidermist through the reduced fee (reduced from \$150 to \$100).

**R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License,** was last amended through exempt rulemaking made effective September 26, 2022, and the Department offers the following economic, small business, and consumer impact statement: The exempt rulemaking establishes a reduced-fee license for a person who has been a resident of this state for one year or more immediately before applying for the license and who is a bona fide Purple Heart Medal recipient as authorized under A.R.S. § 17-333(C)(4). The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring into other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states. The Department receives no appropriations from the general fund and operates primarily with the revenue it generates. A disabled veteran who does not qualify for the complimentary or reduced-fee disabled veteran's licenses authorized under A.R.S. § 17-333(C)(2) and (C)(3) will benefit from the amended rule by being able to purchase the 25% reduced-fee Disabled Veteran's License. The Commission anticipates these changes will result in a decline in revenue due to the \$29 fee reduction. Data from the U.S. Department of Veterans Affairs indicates there are close to 500,000 living

Purple Heart Medal recipients in the world. Because it is not possible to extract the number of Purple Heart Medal recipients living in Arizona, the specific amount of revenue lost is difficult to quantify.

The Commission anticipates the rulemaking will benefit the Department through compliance with the requirements of A.R.S. § 17-333(C)(4). The Commission anticipates the rulemaking will not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this State, persons, or individuals so regulated. The Commission anticipates the rulemaking will have no impact on businesses, both large and small. The Commission anticipates the rulemaking will have a minimal impact on persons regulated by the rule. The Commission anticipates the rulemaking in general will benefit persons regulated by the rule by creating the reduced-fee Purple Heart Medal license. The Commission anticipates the proposed amendments will not significantly affect a person's ability to practice an activity or have a significant impact on a person's income, revenue, or employment in this state related to that activity. The Commission anticipates the rulemaking will not impact public or private employment. The Commission anticipates the rulemaking will not have any impact on State revenues or the general fund. The Commission has determined that there are no alternative methods of achieving the objectives of the proposed exempt rulemaking and that the benefits of the proposed exempt rulemaking outweigh the costs.

**9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses for Article 2 rules.

**10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department completed the course of action indicated in the previous five-year review report as follows:

- Permission to pursue rulemaking granted: September 23, 2019
- Notice of Rulemaking Docket Opening: 26 A.A.R. 1135, June 5, 2020
- Notice of Proposed Rulemaking: 26 A.A.R. 1117, June 5, 2020
- Public Comment Period: June 5, 2020 through July 5, 2020
- G.R.R.C. approved the Notice of Final Rulemaking at the December 2, 2020 Council Meeting
- Notice of Final Rulemaking: 26 A.A.R. 3225, December 18, 2020

The Department did not indicate a course of action in the previous five-year review report for the following rules:

- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-205. High Achievement Scout License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License

Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

R12-4-204. Taxidermy Registration; Register was adopted after the previous five-year review report was approved by the Governor's Regulatory Review Council on June 4, 2019.

**11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The purpose of the Arizona Game and Fish Commission (Commission), the Arizona Game and Fish Department (Department), and the Director of the Department is "to manage wildlife and wildlife habitat in this state as provided by law." Laws 2012, Ch. 283 § 3. "Control of the department is vested in the game and fish commission." A.R.S. § 17-201(A). The Commission appoints the Director who is "the chief administrative officer of the game and fish department." A.R.S. § 17-211(A).

With regard to general rulemaking authority, the Commission is required to "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of [A.R.S. Title 17, Game and Fish]."

The Department actively seeks to ensure its processes and programs align with current technology and circumstances, such as implementing an online guide license examination. Rules are also designed to update best business practices, such as requiring taxidermy registration license holders to retain license related documentation (includes names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number, and the date and number of each species of wildlife received) for an established period of time (five years).

The rules allow for the adoption of updated business practices and represent the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities and impose only those requirements that are necessary to meet the Commission's objectives.

When amending Commission rules, the Department tasks a team of subject matter experts to review and make recommendations for rules. In its review, the team considers all comments from the public and agency staff that administer and enforce the rules, historical data, current processes and environment, and the Department's overall mission. The team takes a customer-focused approach, considers each recommendation from a resource perspective and determines whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determines whether the request is in keeping with overarching guidance provided by the Governor, authorized by statute, in keeping with overarching guidance provided by the Commission, consistent with the Department's overall mission, is least burdensome to persons regulated by the rule, if it could

## Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

be effectively implemented given agency resources, and if it is acceptable to the public.

A.A.C. Title 12, Chapter 4, Article 2 contains fourteen rules denominated as licenses, permits, stamps, and tags. The intent of the Article 2 rules is to provide greater clarity to the rules governing hunting and fishing licenses. Article 2 rules establish the privileges associated with the hunting and fishing licenses, permits, stamps, and tags issued by the Department, to include exemptions from hunting and fishing license requirements. It is important to note; hunters and anglers are the nation's oldest conservationists and provide more direct support for wildlife than any other group. The purchase of a license is the cornerstone of the user pay public benefit model, not only providing direct revenue for conservation but factoring in other constructs such as the apportionment of Wildlife and Sportfish Restoration dollars to the states.

In 2014, the Commission established a simpler license structure after deploying an extensive outreach campaign from May through June 2013 to collect feedback on a conceptual license and fee structure. The campaign included public meetings in Ajo, Eagar, Flagstaff, Globe, Havasu, Kingman, Mesa, Page, Payson, Phoenix, Pinetop, Prescott, Safford, Sierra Vista, Tucson, Wickenburg, and Yuma (the Phoenix meeting was also webcast through the Department website). The Department also held meetings with a number of conservation groups to discuss the conceptual license structure and fees. The public meeting campaign resulted in 658 comments from people who attended the public meetings, and another 800 comments were submitted via e-mail during this same time-frame. The Department also received more than 1,480 responses from a science-based mail survey of hunters and anglers. In establishing the new license structure that is simpler and easier to understand, the Commission also increased the value of hunting and fishing licenses offered by the Department. For example, the general fishing license includes trout, simultaneous fishing (means taking fish using two lines), community (urban) fishing privileges and Colorado River privileges for one \$37 fee (previously, all of these additional privileges were purchased separately for a combined total cost of \$69.75). In addition, a one-year (365-day) license program was implemented. Previously, most licenses were valid for a calendar year (January 1 through December 31).

The public benefits from rules that clearly outline hunting and fishing license privileges, requirements, and exemptions.

The public benefits from rules that support the North American Model of Conservation. There is no alternative funding system in place to replace the potential lost funds for conservation. If hunting ends, funding for wildlife conservation is in peril. The Department benefits from rules that help ensure the proper management and conservation of the State's wildlife resources.

The public benefits from rules that are clear and concise. The Department benefits from rules that allow continued regulatory oversight of activities pertaining to wildlife. The public and Department benefit from rules that are understandable.

The Department believes the rules impose the least burdens and costs to persons regulated by the rule.

**12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The following rules are based on state law and federal law is not directly applicable to the rule:

- R12-4-201. Pioneer License
- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License
- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

The Department has determined the following rule is not more stringent than its corresponding federal laws:

- **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp**, federal regulation 50 C.F.R. Part 20 is applicable to the subject of the rule. 50 C.F.R. Part 20 establishes migratory bird hunting stamp requirements as they apply to the take, possession, and transport of migratory birds and are in addition to the provisions of the Migratory Bird Hunting Stamp Act of 1934.

**13. For a rule adopted after July 29, 2010, that requires the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The following rules require the issuance of a “general permit” as defined under A.R.S. § 41-1001(11) and are in compliance with A.R.S. § 41-1037.

- R12-4-201. Pioneer License
- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp

Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

**14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend the following rules as indicated in this report:

- R12-4-202. Complimentary and Reduced-fee Disabled Veteran’s License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-205. High Achievement Scout License
- R12-4-208. Guide License
- R12-4-216. Crossbow Permit

The Department anticipates requesting an exception to the rulemaking moratorium proscribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025, provided the Commission is granted permission to pursue rulemaking.

The Department proposes no action for the following rules:

- R12-4-201. Pioneer License
- R12-4-204. Taxidermy Registration; Register
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-210. Combination Hunting and Fishing License; Exemption

Article 2. Licenses; Permits; Stamps; Tags Five-year Review Report Continued

- R12-4-211. Lifetime License; Benefactor License
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

### ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- R12-4-201. Pioneer License
- R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License
- R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp
- R12-4-204. Taxidermy Registration; Register
- R12-4-205. High Achievement Scout License
- R12-4-206. General Hunting License; Exemption
- R12-4-207. General Fishing License; Exemption
- R12-4-208. Guide License
- R12-4-209. Repealed
- R12-4-210. Combination Hunting and Fishing License; Exemption
- R12-4-211. Lifetime License; Benefactor License
- R12-4-212. Repealed
- R12-4-213. Hunt Permit-tags and Nonpermit-tags
- R12-4-214. Repealed
- R12-4-215. Youth Group Two-day Fishing License
- R12-4-216. Crossbow Permit
- R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)
- R12-4-218. Repealed
- R12-4-219. Renumbered
- R12-4-220. Repealed

#### **R12-4-201. Pioneer License**

- A.** A pioneer license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The pioneer license is only available at a Department office.
- B.** The pioneer license is a complimentary license and is valid for the license holder's lifetime. The license remains valid if the licensee subsequently resides outside of this state.
  - 1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
  - 2. Limits established under R12-4-114 for nonresident hunt permit-tags and nonpermit-tags do not apply to a pioneer license holder.
- C.** A person who is age 70 or older and has been a resident of Arizona for at least 25 consecutive years immediately preceding application may apply for a pioneer license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and on the Department's website. A pioneer license applicant shall provide all of the following information on the application:
  - 1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  - 2. Affirmation that:
    - a. The applicant is 70 years of age or older and has been a resident of this state for 25 or more consecutive years immediately preceding application for the license; and
    - b. The information provided on the application is true and accurate.
  - 3. Applicant's signature and date.
- D.** In addition to the requirements listed under subsection (C), an applicant for a pioneer license shall also submit a copy of any one of the following documents at the time of application:
  - 1. Valid U.S. passport;
  - 2. Applicant's birth certificate;
  - 3. Valid government-issued driver's license; or
  - 4. Valid government-issued identification card.

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- E. All information and documentation provided by the applicant is subject to Department verification.
- F. The Department shall deny a pioneer license when the applicant:
  - 1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(1),
  - 2. Fails to comply with this Section, or
  - 3. Provides false information on the application.
- G. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Ch 6, Article 10.
- H. A pioneer license holder may request a no-fee duplicate of the paper license provided:
  - 1. The license was lost or destroyed;
  - 2. The license holder submits a written request to the Department for a no-fee duplicate paper license; and
  - 3. The Department's records indicate a pioneer license was previously issued to that person.
- I. A person issued a pioneer license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Former Section R12-4-31 renumbered as Section R12-4-201 without change effective August 13, 1981. New Section R12-4-201 amended effective August 31, 1981 (Supp. 81-4). Amended subsection (B) effective December 9, 1985 (Supp. 85-6). Amended subsections (D) and (E), and changed application for a Pioneer License effective September 24, 1986 (Supp. 86-5). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4). Amended by final exempt rulemaking at 28 A.A.R. 3360, effective November 26, 2022.

### **R12-4-202. Complimentary and Reduced-fee Disabled Veteran's License; Reduced-fee Purple Heart Medal License**

- A. The complimentary and reduced-fee disabled veteran's licenses and Purple Heart Medal license grant all of the hunting and fishing privileges of a combination hunting and fishing license. The disabled veteran's and Purple Heart Medal license are only available at a Department office.
- B. The Department offers three types of veteran's licenses:
  - 1. A complimentary license to a disabled veteran who receives compensation from the U.S. government for a permanent service-connected disability rated as 100% disabling.
    - a. The complimentary license is valid for either a three-year period from the issue date or the license holder's lifetime.
    - b. If the certification or benefits letter required under subsection (D)(1) indicate the applicant's disability rating of 100% is permanent and:
      - i. Will not be reevaluated, the disabled veteran's license shall be valid for the license holder's lifetime.
      - ii. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.
    - c. Eligibility for the complimentary disabled veteran's license is based on the disability rating, not on the compensation received by the veteran.
    - d. An applicant for a complimentary disabled veteran's license shall have been a resident of Arizona for at least one year immediately preceding application.
  - 2. A reduced-fee license to a disabled veteran who is a resident as defined under A.R.S. § 17-101 and who is receiving compensation from the U.S. government for a service-connected disability.
    - a. The reduced-fee license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. The applicant shall pay the fee required under R12-4-102.
  - 3. A reduced-fee license to a person who submits satisfactory proof to the Department that the person is a bona fide Purple Heart Medal recipient.
    - a. The reduced-fee license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. An applicant for a reduced-fee Purple Heart Medal license shall have been a resident of Arizona for at least one year immediately preceding application.
- C. A person applying for a disabled veteran's or Purple Heart Medal license shall submit an application to the Department.

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

The application form is furnished by the Department and available at any Department office and on the Department's website. The applicant shall provide all of the following information on the application:

1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the eligibility requirements prescribed under A.R.S. § 17-333(C)(2), (C)(3), or (C)(4),
    - b. The applicant has been a resident of this state for at least one year immediately preceding application for the license,
    - c. The information provided on the application is true and accurate.
  3. Applicant's signature and date.
- D.** In addition to the requirements established under subsection (B), an applicant for a veteran's license shall, at the time of application, certify eligibility for the license by submitting:
1. For a complimentary or reduced-fee disabled veterans license issued under A.R.S. § 17-333(C)(2) or (C)(3) respectively, an original or facsimile DD-214, certification form, or a benefits letter issued by the U.S. Department of Veteran's Affairs (DVA) or obtained from the DVA website that meets the requirements specified in subsections (B)(1) and (B)(2). The certification form is furnished by the Department and is available at any Department office and on the Department's website. The certification shall be completed and signed by an agent of the U.S. Department of Veteran's Affairs.
  2. For a Purple Heart Medal license issued under A.R.S. § 17-333(C)(4), an original or facsimile DD-214 or DD-215, service records showing the award, military orders of the award, or other military discharge document such as WD AGO Form. The actual Purple Heart Medal or a certificate of award will not suffice alone for verification purposes.
- E.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- F.** The Department shall deny a disabled veteran's or Purple Heart Medal license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-333(C)(2), (C)(3), or (C)(4),
  2. Fails to comply with the requirements of this Section, or
  3. Provides false information during the application process.
- G.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- H.** A complimentary disabled veteran's license holder may request a no-fee duplicate paper license provided:
1. The license was lost or destroyed,
  2. The license holder submits a written request to the Department for a duplicate license, and
  3. The Department's records indicate a disabled veteran's license was previously issued to that person.
- I.** A person issued a disabled veteran's license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).
- J.** For the purposes of this Section:
1. "Disabled veteran" means a veteran of the armed forces of the U.S. with a service connected disability.
  2. "Veteran" means a person who has served in the U.S. armed forces.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Former Section R12-4-66 renumbered, then repealed and readopted as Section R12-4-43 effective February 20, 1981 (Supp. 81-1). Former Section R12-4-43 renumbered as Section R12-4-202 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 31, 1984 (Supp. 84-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section R12-4-202 adopted effective December 22, 1989 (Supp. 89-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1199, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045,

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2550, effective January 5, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 27 A.A.R. 1076, effective August 21, 2021 (Supp. 21-2). Amended by final exempt rulemaking, effective September 26, 2022.

### **R12-4-203. National Harvest Information Program (HIP); State Waterfowl and Migratory Bird Stamp**

- A. All state fish and wildlife agencies are required to obtain data to assess the harvest of migratory game birds in compliance with the federally mandated National Harvest Information Program administered by the United States Fish and Wildlife Service in accordance with 50 C.F.R. Part 20.
- B. In compliance with the National Harvest Information Program, the Department requires a person to possess a migratory bird stamp or authorization number, which may be affixed to or written on the appropriate license, and a current, valid federal waterfowl stamp. The migratory bird stamp and authorization number are required to take band-tailed pigeons, moorhen, coots, doves, ducks, geese, snipe, or swans.
  - 1. The state migratory bird stamp expires on June 30 of each year. To obtain a state migratory bird stamp, a person shall submit:
    - a. The fee required under R12-4-102, and
    - b. A completed state migratory bird registration form to a license dealer or a Department office.
  - 2. The person shall provide on the state migratory bird registration form the person's:
    - a. Name,
    - b. Mailing address,
    - c. Date of birth, and
    - d. Information on past and anticipated hunting activity.
  - 3. The youth combination hunting and fishing license includes the state migratory bird stamp privileges. A youth hunter who possesses a valid combination hunting and fishing license shall obtain:
    - a. A Federal waterfowl stamp when the youth hunter is 16 years of age or older and is taking ducks, geese, swans, coots, gallinules; or
    - b. A permit-tag when the youth hunter is taking sandhill crane.
- C. A license dealer shall submit state migratory bird registration forms for all state migratory bird stamps sold with the monthly report required under A.R.S. § 17-338.

#### **Authorizing Statute**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(7), 17-235, 17-333, 17-333.03, and 41-1005

#### **Historical Note**

Amended effective March 7, 1979 (Supp. 79-2). Amended effective April 22, 1980 (Supp. 80-2). Amended subsections (A), (C), (D), and (G) effective December 29, 1980 (Supp. 80-6). Former Section R12-4-41 renumbered as Section R12-4-203 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (C), (E), (G) and added Form 7016 (Supp. 81-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section adopted effective July 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

### **R12-4-204. Taxidermy Registration; Register**

- A. A person shall register with the Department before engaging in the business of taxidermy for hire. A taxidermy registration authorizes a person to mount, refurbish, maintain, restore, or preserve wildlife as defined under A.R.S. § 17-101.
- B. A taxidermy registration expires on December 31 of each year.
- C. The Department shall deny a taxidermy registration when the applicant:
  - 1. Fails to meet the requirements established under this Section;
  - 2. Provides false information during the application process; or
  - 3. Provides false information in the register required under A.R.S. § 17-363(B).
- D. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- E. A person may apply for a taxidermy registration by paying the applicable fee and submitting an application to the Department. The application form is available on the Department's website. A taxidermy registration applicant shall provide all of the following information:
  - 1. The applicant's information:
    - a. Name;

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- b. Date of birth;
  - c. Department identification number, when applicable;
  - d. Mailing address, when applicable;
  - e. Physical address;
  - f. Telephone number, when available;
  - g. Email address, when available; and
2. The applicant's business information:
    - a. Name;
    - b. Mailing address;
    - c. Email address;
    - d. Website URL address, if available;
    - e. Business telephone number, when applicable;
    - f. Calendar year for which the application is made; and
    - g. Whether the applicant is seeking renewal of an existing taxidermy registration.
  3. Affirmation that the information provided on the application is true and accurate; and
  4. Applicant's signature and date.
- F.** A registered taxidermist may submit an application for renewal of a taxidermy registration after December 1 of the year it was issued.
- G.** A registered taxidermist shall maintain a register of all persons who furnish raw and unmounted wildlife specimens for taxidermy service using the form available on the Department's website.
1. This register shall be:
    - a. Maintained for a period of five years after the date the raw and unmounted wildlife specimens were received;
    - b. Provided upon request to an employee of the Department; and
    - c. Filed with the Department on or before January 31 of each year.
  2. This register shall contain all of the following information, as applicable:
    - a. The registered taxidermist's information:
      - i. Name;
      - ii. Taxidermy registration number;
      - iii. Email address, when available; and
    - b. The customer's or potential customer's:
      - i. Name;
      - ii. Address;
      - iii. Taker's tag or license number;
      - iv. Species and number of wildlife received;
      - v. Date wildlife received; and
    - c. A signed affirmation from the registered taxidermist that the information provided in the register is true and accurate.
  3. The taxidermy renewal registration becomes invalid if the register is not submitted to the Department by January 31 of the year following registration.
- H.** As authorized under A.R.S. § 17-363(C), the Commission may revoke or suspend the taxidermy registration of a person convicted of violating any provision of A.R.S. § 17-363 or requirement established under this Section.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-101, 17-102, 17-333, 17-335.01, 17-363, and 41-1005

### Historical Note

Amended effective May 31, 1976 (Supp. 76-3). Correction, Historical Note Supp. 76-3 should read "Amended effective May 3, 1976" (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective March 20, 1981 (Supp. 81-2). Former Section R12-4-32 renumbered as Section R12-4-204 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Repealed by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).  
New Section made by final rulemaking at 25 A.A.R. 1854, effective July 2, 2019 (Supp. 19-3).

### R12-4-205. High Achievement Scout License

- A.** A high achievement scout license is offered to a resident who is:
1. Eligible for a combination hunting and fishing license,
  2. Under 21 years of age, and
  3. A member of the Boy Scouts of the United States of America and has attained the rank of Eagle Scout, or

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

4. A member of the Girl Scouts of the United States of America and has attained the Gold Award.
- B.** The high achievement scout license grants all of the hunting and fishing privileges of the youth combination hunting and fishing license and is only available at Department offices.
  1. The license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
  2. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the high achievement scout license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C.** An applicant for a high achievement scout license shall apply on an application form available from any Department office and on the Department's website. The applicant shall provide all of the following information on the application:
  1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the application, an eligible applicant shall present with the application:
  1. For an applicant who is a member of the Boy Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Boy Scouts of the United States of America stating that the applicant has attained the rank of Eagle Scout,
    - b. A Boy Scouts of the United States of America Eagle Scout Award Certificate, or
    - c. A Boy Scouts of the United States of America Eagle Scout wallet card.
  2. For an applicant who is a member of the Girl Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Girl Scouts of the United States of America stating that the applicant has completed the award,
    - b. A Girl Scouts of the United States of America Gold Award Certificate, or
    - c. A Girl Scouts Gold Award Certificate from the local council.
- E.** The Department shall deny a high achievement scout license to an applicant who:
  1. Is not eligible for the license;
  2. Fails to comply with the requirements of this Section; or
  3. Provides false information during the application process.
- F.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Editorial correction subsection (A) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective September 23, 1980 (Supp. 80-5). Former Section R12-4-33 renumbered as Section R12-4-205 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-206. General Hunting License; Exemption

- A.** A general hunting license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the general hunting license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** The general hunting license is valid for one-year from:

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

1. The date of purchase when a person purchases the hunting license from a License Dealer, as defined under R12-4-101;
  2. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
  3. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
  4. The selected start date when a person purchases the hunting license from a Department office or online. A person may select the start date for the hunting license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C. A resident may apply for a general hunting license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or on the Department's website. The application is furnished by the Department and is available at any Department office, License Dealer, and on the Department's website. A general hunting license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), at the time of application an applicant who is applying for a general hunting license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information provided on the online application is true and accurate.
- E. A person who is under 10 years of age may hunt wildlife other than big game without a hunting license when accompanied by a properly licensed person who is 18 years of age or older.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Amended effective March 7, 1979 (Supp. 79-2). Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-34 renumbered as Section R12-4-206 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-207. General Fishing License; Exemption

- A. A general fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The general fishing license is valid:
1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission-designated community waters. The list of Commission-designated community waters is available at any License Dealer, Department office, and on the Department's website.
  2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a general fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- B. The general fishing license is valid for one-year from:
1. The date of purchase when a person purchases the fishing license from a License Dealer, as defined under R12-4-101; or
  2. The selected start date when a person purchases the fishing license from a Department office or online. A person may

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

select the start date for the fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.

- C. A resident or nonresident may apply for a general fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or on the Department's website. The application is furnished by the Department and is available at any Department office, License Dealer, and on the Department's website. A general fishing license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), an applicant who is applying for a general fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information provided on the online application is true and accurate.
- E. In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish without a fishing license.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Amended effective March 7, 1979 (Supp. 79-2). Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-35 renumbered as Section R12-4-207 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-208. Guide License

- A. A guide, as defined under A.R.S. § 17-101, is a person who does any one of the following:
1. Advertises for guiding services.
  2. Is presented to the public for hire as a guide.
  3. Is employed by a commercial enterprise as a guide.
  4. Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading, or instructing a person in the field to locate and take wildlife.
  5. Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
- B. A person shall not act as a guide unless the person holds one of the following guide licenses:
1. A hunting guide license, which authorizes the license holder to act as a guide for the lawful taking of wildlife other than aquatic wildlife as defined under A.R.S. § 17-101.
  2. A fishing guide license, which authorizes the license holder to act as a guide for the lawful taking of aquatic wildlife.
  3. A hunting and fishing guide license, which authorizes the license holder to act as a guide for the lawful taking of wildlife.
- C. A guide license shall expire on December 31 of each year.
- D. A person is not eligible to apply for an original or renewal guide license when any one of the following conditions apply:
1. The applicant was convicted of a felony violation of any federal wildlife law, within five years immediately preceding the date of application;
  2. The applicant was convicted of a violation listed under A.R.S. § 17-309(D), within five years immediately preceding the date of application;
  3. The applicant was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended within five years immediately preceding the date of application; or

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

4. The applicant's privilege to take or possess wildlife or to guide or act as a guide is currently suspended or revoked anywhere in the U.S. for violation of a federal or state wildlife law.
- E.** Notwithstanding subsection (D), a person who was convicted of a misdemeanor violation of any wildlife law within one year preceding the date of application may apply for a guide license provided the person immediately and voluntarily reported the violation to the Department after committing the violation.
- F.** An applicant for a guide license shall:
  1. Be 18 years of age or older, and
  2. Possess the required Department-issued license, as applicable:
    - a. A current Arizona hunting license when applying for a hunting guide license;
    - b. A current Arizona fishing license when applying for a fishing guide license;
    - c. A current Arizona combination hunting and fishing license when applying for a hunting and fishing guide license;
- G.** The guide license does not exempt the license holder from any applicable method of take or licensing requirement. The guide license holder shall comply with all applicable Commission rules, including, but not limited to, rules governing:
  1. Lawful methods of take,
  2. Lawful devices, and
  3. License requirements.
- H.** Unless otherwise provided under this Section, a person shall successfully complete the Department administered examination, and answer at least 80% of the questions correctly, prior to applying for a guide license. Guide examinations are:
  1. Provided at a Department office.
  2. Valid until December 31 of the year in which it was taken.
  3. A person interested in taking the guide examination shall contact a Department office to obtain scheduling information.
- I.** The examination is based on the type of guide license the person is seeking.
  1. Before taking the examination, the applicant shall provide their:
    - a. Name;
    - b. Date of birth; and
    - c. Driver license number and issuing state.
  2. The examination may include questions regarding any of the following topics:
    - a. A.R.S. Title 17 Game and Fish statutes and Commission rules regarding the taking and handling of terrestrial and aquatic wildlife;
    - b. A.R.S. Title 28, Ch 3, Article 20 Off-highway Vehicles statutes and rule regarding the use of off-highway vehicles;
    - c. A.R.S. Title 5, Ch 3, Boating and Water Sports statutes and Commission rules on boating;
    - d. Requirements for guiding on federal lands;
    - e. Identification of aquatic wildlife species;
    - f. Identification of wildlife;
    - g. Special state and federal laws regarding certain species;
    - h. General knowledge of fair chase, hunter ethics, and conservation in Arizona;
    - i. General knowledge of species habitat and wildlife that may occur in the same habitat;
    - j. General knowledge of the types of habitat within the State; and
    - k. General knowledge of special or concurrent jurisdictions within the State.
  3. An applicant who fails the examination may retake the examination as agreed upon by the applicant and the examination administrator.
- J.** In addition to the guide examination requirement under subsection (H), a guide license holder shall take the Department administered examination when:
  1. The applicant currently holds a hunting or fishing guide license and is applying for a combination hunting and fishing guide license;
  2. The applicant for a hunting guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of terrestrial wildlife within one year preceding the date of application;
  3. The applicant for a fishing guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of aquatic wildlife within one year preceding the date of application;
  4. The applicant failed to submit a renewal application postmarked before the expiration date of the guide license; or
  5. The applicant failed to submit the annual report for the preceding license year by January 10 of the following license year.
- K.** A person may apply for a guide license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and on the Department's website. A guide license applicant shall provide all of the following information on the application:
  1. The applicant's personal information:

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- a. Name;
  - b. Date of birth;
  - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
  - d. Social Security Number;
  - e. Current hunting, fishing, or combination hunting and fishing license number;
  - f. Residency status;
  - g. Mailing address, when applicable;
  - h. Physical address;
  - i. Telephone number, when available;
  - j. E-mail address, when available;
  - k. Type of guide license sought; and
  - l. Calendar year for which the application is made;
2. The outfitting or guide:
    - a. Business name; and
    - b. Business address, as applicable;
  3. Responses to questions relating to criminal violations;
  4. Affirmation that:
    - a. The applicant meets the eligibility requirements prescribed under this Section; and
    - b. The information provided on the application is true and accurate;
  5. Applicant's signature and date.
- L.** In addition to the requirements listed under subsection (K), an applicant for a guide license shall also submit a copy of any one of the following as proof of the applicant's identity:
1. Valid U.S. passport;
  2. Applicant's birth certificate;
  3. Valid government-issued driver's license; or
  4. Valid government-issued identification card.
- M.** All information and documentation provided by the guide license applicant is subject to Department verification.
- N.** An applicant for a guide license shall pay all applicable fees required under R12-4-102 upon approval of an initial or renewal application for a guide license.
- O.** The Department shall deny a guide license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-362,
  2. Fails to comply with the requirements of this Section,
  3. Provides false information during the application process,
  4. Fails to provide the annual report required under subsection (R) by January 10, or
  5. Provides false information in the annual report required under subsection (R) within three years immediately preceding the date of application.
- P.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- Q.** A guide license holder may submit an application for renewal of a guide license after December 1 of the year it was issued. The Department shall not start the substantive review, as defined under A.R.S. § 41-1072, before January 10 of the following license year, unless the Department receives the annual report prior to the date established under subsection (R). The current guide license shall remain valid pending a Department decision on the application for renewal, provided:
1. The application for renewal is submitted to the Department by December 31, and
  2. The Department receives the annual report submitted in compliance with subsection (R).
- R.** A guide license holder shall submit to the Department the annual report required under A.R.S. § 17-362(C) for the previous calendar year before January 10 of the following license year. The report form is furnished by the Department and is available at any Department office or on the Department's website.
1. A report is required whether or not the license holder performed any guiding activities.
  2. The annual report shall include all of the following information, as applicable:
    - a. License holder's personal information:
      - i. Name;
      - ii. Guide license number; and
      - iii. E-mail address, when available; and
    - b. Client's personal information:
      - i. Name;
      - ii. Mailing address; and
      - iii. Arizona license, tag and permit numbers, and

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- c. Dates guiding activities were conducted;
  - d. Number and species of wildlife taken by the clients;
  - e. Game management unit or body of water where guiding activities took place;
  - f. Affirmation that the information provided in the annual report is true and accurate; and
  - g. License holder's signature and date.
3. The Department shall not renew a guide license if the annual report is not submitted to the Department by January 10 of the following license year.
- S. The date of receipt for the items required under subsections (K), (L), (Q), and (R) shall be as follows:
1. The date a person presents the items to a Department office;
  2. The date a private express mail carrier receives the package containing the items as indicated on the shipping package; or
  3. The date of the United States Postal Service postmark stamped on the envelope containing the items.
- T. A guide license holder shall:
1. Complete a Department-sanctioned continuing education course at least once every five-years.
  2. While performing guide activities or providing guide services:
    - a. Possess a valid guide license.
    - b. Possess a valid Arizona hunting, fishing, or combination hunting and fishing license, as applicable under subsection (F)(2).
    - c. Present the license for inspection upon the request of any peace officer, including wildlife managers and game rangers.
    - d. Report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder.
- U. A guide license holder shall not:
1. Use, or allow another person to use, any method or device prohibited under any federal or state wildlife regulation, law, or rule while taking wildlife.
  2. Aid, counsel, agree to aid, or attempt to aid another person in planning or engaging in conduct that results in a violation of any federal or state wildlife regulation, law, or rule while taking wildlife.
  3. Pursue any wildlife or hold at bay any wildlife for a person unless that person is present during the pursuit to take the wildlife.
    - a. The person shall be continuously present during the entire pursuit of that specific target animal.
    - b. If dogs are used, the person shall be present when the dogs are released on a specific target animal and shall be continuously present for the remainder of the pursuit.
  4. Hold wildlife at bay other than during daylight hours, unless a Commission Order authorizes the take of the species at night.
- V. As authorized under A.R.S. § 17-362(A), the Commission may revoke or suspend a guide license when any one or more of the following actions occur:
1. The guide license holder failed to comply with the requirements of A.R.S. Title 17 or was convicted of violating any provision of A.R.S. Title 17;
  2. The guide license holder was convicted of a felony violation of any federal wildlife law;
  3. The guide license holder was convicted of a violation listed under A.R.S. § 17-309(D);
  4. The guide license holder was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended; or
  5. The guide license holder's privilege to take or possess wildlife is suspended or revoked by any jurisdiction for violation of a federal or state wildlife law.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-101, 17-245, 17-362, and 41-1005

### Historical Note

Amended effective March 7, 1979 (Supp. 79-2). Former Section R12-4-40 renumbered as Section R12-4-208 without change effective August 13, 1981 (Supp. 81-4). Former rule repealed, new Section R12-4-208 adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-209. Repealed

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

### Historical Note

Adopted effective March 20, 1981 (Supp. 81-2). Former Section R12-4-42 renumbered as Section R12-4-209 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Repealed by final rulemaking at 27 A.A.R. 1368 (September 3, 2021), effective January 1, 2022 (Supp. 21-4).

### R12-4-210. Combination Hunting and Fishing License; Exemption

- A. A combination hunting and fishing license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds.
- B. A combination hunting and fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-101. The combination hunting and fishing license is valid:
  - 1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission-designated community waters. The list of Commission-designated community waters is available at any License Dealer, Department office, and on the Department's website.
  - 2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a combination hunting and fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- C. The Department offers three combination hunting and fishing licenses:
  - 1. A short-term combination hunting and fishing license, valid for one 24-hour period from midnight to midnight.
    - a. The short-term combination hunting and fishing license is not valid for the take of big game animals.
    - b. The short-term combination hunting and fishing license is valid for the take of migratory game birds and waterfowl, provided the person possesses the applicable State Migratory Bird stamp and Federal Waterfowl stamp.
    - c. The Department does not limit the number of short-term combination hunting and fishing licenses a resident or nonresident may purchase.
  - 2. A combination hunting and fishing license for a person age 18 and over.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a License Dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
  - 3. A youth combination hunting and fishing license for a person through age 17.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a License Dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- D. A resident or nonresident may apply for a combination hunting and fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or on the Department's website. The application is furnished

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

by the Department and is available at any Department office, License Dealer, and on the Department's website. A combination hunting and fishing license applicant shall provide the following information on the application:

1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- E.** In addition to the requirements listed under subsection (C), an applicant who is applying for a combination hunting and fishing license:
1. In person shall pay the applicable fee required under R12-4-102.
  2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information provided on the online application is true and accurate.
- F.** Exemptions authorized under R12-4-206(E) and R12-4-207(E) also apply to this Section, as applicable.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective January 20, 1977 (Supp. 77-1). Editorial correction subsection (A), paragraph (2) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective March 17, 1981 (Supp. 81-2). Former Section R12-4-39 renumbered as Section R12-4-210 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 16, 1982 (Supp. 82-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-211. Lifetime License; Benefactor License

- A.** The Department offers the following lifetime licenses:
1. A lifetime hunting license includes the privileges established under R12-4-206(A).
  2. A lifetime fishing license includes the privileges established under R12-4-207(A).
  3. A lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
  4. A benefactor lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
- B.** A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate lifetime hunting or combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C.** The lifetime licenses identified under subsection (A) do not expire and remain valid if the licensee subsequently resides outside of this state.
1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required hunt permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
  2. Limits established under R12-4-114 for nonresident hunt permit-tags and nonpermit-tags do not apply to a lifetime license holder.
- D.** A resident may apply for a lifetime license by submitting an application to the Department and paying the applicable fee required under subsection (E). The application is furnished by the Department and is available at any Department office and on the Department's website. A lifetime license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
    - e. Department identification number, when applicable;

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- f. Residency status and number of years of residency immediately preceding application, when applicable;
  - g. Mailing address, when applicable;
  - h. Physical address;
  - i. Telephone number, when available; and
  - j. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- E.** The fees for resident lifetime licenses listed under (A)(1) through (A)(3) are determined by the age of the applicant as follows:
1. Age 0 through 13 years is 17 times the fee established under R12-4-102 for the equivalent one-year license.
  2. Age 14 through 29 years is 18 times the fee established under R12-4-102 for the equivalent one-year license.
  3. Age 30 through 44 years is 16 times the fee established under R12-4-102 for the equivalent one-year license.
  4. Age 45 through 61 years is 15 times the fee established under R12-4-102 for the equivalent one-year license.
  5. Age 62 and older is 8 times the fee established under R12-4-102 for the equivalent one-year license.
  6. For the purposes of this subsection, when the applicant is under the age of 18, the fee for the lifetime license is based on the full priced license fee, not the youth license fee.
- F.** The fee for the benefactor license listed under (A)(4) is \$1,500. The difference between \$1,500 and the license fee for a resident lifetime combination hunting and fishing license established under subsection (E):
1. Is a donation to the State for continued management, protection, and conservation of the State's wildlife.
  2. Shall be credited to the wildlife endowment fund established under A.R.S. § 17-271.
  3. May be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations.
- G.** A lifetime license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- H.** A person issued a lifetime license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A)(1), (A)(2), (A)(3), or (A)(4), as applicable, for the equivalent lifetime license.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333, 17-335.01, and 41-1005

### Historical Note

Amended effective March 7, 1979 (Supp. 79-2). Amended effective October 9, 1980 (Supp. 80-5). Former Section R12-4-36 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4). Amended by final exempt rulemaking at 28 A.A.R. 3360, effective November 26, 2022.

### R12-4-212. Repealed

#### Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective January 1, 1977 (Supp. 76-5). Former Section R12-4-37 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Repealed by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-213. Hunt Permit-tags and Nonpermit-tags

- A.** A valid hunt permit-tag or nonpermit-tag is required to validate a license to take a big game animal or other wildlife requiring a valid tag. Before a person may take a big game animal or other wildlife requiring a tag, the person shall apply for and obtain the appropriate tag required for the take of that big game animal or other wildlife.
- B.** A person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit-tag application schedule that the Department publishes and is available at any Department office, on the Department's website, or a License Dealer as defined under R12-4-101.
- C.** A person applying for a nonpermit-tag shall apply in accordance with R12-4-114 and pay the required fee established under R12-4-102.
- D.** Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate tag to a person whose tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or placed on a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). The person shall complete and sign the affidavit furnished by the Department. The affidavit is available at any Department office or License Dealer. The person shall provide the following information on the affidavit:
  1. The applicant's personal information:

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- a. Name;
- b. Department identification number, when applicable;
- c. Residency status and number of years of residency immediately preceding application, when applicable;
2. The original license or tag information:
  - a. Type of license or tag;
  - b. Place of purchase;
  - c. Purchase date, when available;
3. Disposition of the original tag for which a duplicate is being purchased.
4. A person applying for a duplicate tag after a harvested animal that was subsequently condemned as described under subsection (D) shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- E. The person shall pay the applicable duplicate fee prescribed under R12-4-102.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-332, 17-333, 17-345, and 41-1005

### Historical Note

Amended effective March 7, 1979 (Supp. 79-2). Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-38 renumbered as Section R12-4-213 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 26 A.A.R. 3229, effective July 1, 2021 (Supp. 20-4).

### R12-4-214. Repealed

#### Historical Note

Former Section R12-4-67 renumbered as Section R12-4-214 without change effective August 13, 1981 (Supp. 81-4). Repealed effective December 22, 1989 (Supp. 89-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Repealed by final rulemaking at 27 A.A.R. 1368 (September 3, 2021), effective January 1, 2022 (Supp. 21-4).

### R12-4-215. Youth Group Two-day Fishing License

- A. A youth group two-day fishing license authorizes a nonprofit organization or governmental entity as defined under subsection (C) that sponsors adult supervised activities for youth to take up to 25 youths fishing. The youth group two-day fishing license is only available from a Department office. The youth group two-day fishing license is valid for:
  1. Two consecutive days,
  2. The take of all aquatic wildlife, and
  3. All privileges established under R12-4-207(A).
- B. A nonprofit organization or governmental entity may apply for a youth group two-day fishing license at any Department office. An applicant for a youth group two-day fishing license shall be a resident. The applicant shall pay the fee required under R12-4-102 and provide the following information at the time of application:
  1. The nonprofit organization's or governmental entity's:
    - a. Name;
    - b. Mailing address; and
    - c. Telephone number, when available;
  2. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Mailing address, when applicable;
    - f. Physical address;
    - g. Telephone number, when available; and
    - h. E-mail address, when available;
  3. The dates on which the nonprofit organization intends to conduct the youth group fishing activity.
  4. The approximate number of youth participating in the group fishing activity.
- C. For the purpose of this Section, "governmental entity" means any town, city, county, municipality, or other political subdivision of this state or any department, agency, board, commission, authority, division, office, public school, public charter school, public corporation, or other public entity of this state or any department agency bureau, or office of the federal government that is physically located within this state.

### Authorizing Statute

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-333 and 41-1005

### Historical Note

Adopted effective December 9, 1982 (Supp. 82-6). Section repealed, new Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective December 31, 2003 (Supp. 05-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

### R12-4-216. Crossbow Permit

- A.** For the purposes of this Section, “healthcare provider” means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
1. Medical Doctor,
  2. Doctor of Osteopathy,
  3. Doctor of Chiropractic,
  4. Nurse Practitioner, or
  5. Physician Assistant.
- B.** A crossbow permit allows a person to use a crossbow, or any bow to be drawn and held with an assisting device, during an archery-only season, as prescribed under R12-4-318, when authorized under R12-4-304 as lawful for the species hunted.
- C.** The crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement. The permit holder shall be responsible for compliance with all applicable regulatory requirements.
- D.** The crossbow permit does not expire, unless:
1. The medical certification portion of the application indicates the person has a temporary physical disability; then the crossbow permit shall be valid for a period of one year from the date the medical certification portion of the application was signed by the healthcare provider,
  2. The permit holder no longer meets the criteria for obtaining the crossbow permit, or
  3. The Commission revokes the person’s hunting privileges under A.R.S. § 17-340. A person whose crossbow permit is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a crossbow permit shall apply by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A crossbow permit applicant shall provide all of the following information on the application:
1. The applicant’s:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant’s eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  3. Applicant’s signature and date.
  4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant has one or more of the following physical limitations:
      - i. An amputation involving body extremities required for stable function to use conventional archery equipment;
      - ii. A spinal cord injury resulting in a disability to the lower extremities, leaving the applicant nonambulatory;
      - iii. A wheelchair restriction;
      - iv. A neuromuscular condition that prevents the applicant from drawing and holding a bow;
      - v. A failed manual muscle test involving the grading of shoulder and elbow flexion and extension or an impaired range-of-motion test involving the shoulder or elbow; or
      - vi. A combination of comparable physical disabilities resulting in the applicant’s inability to draw and hold a bow;
      - vii. A failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds. The functional draw test may not be used to determine eligibility for the permit when it is not associated with

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- a disability.
- b. Indicate whether the disability is temporary or permanent and, when temporary, specify the expected duration of the physical limitation; and
- c. Provide the healthcare provider's:
  - i. Typed or printed name,
  - ii. License number,
  - iii. Business address,
  - iv. Telephone number, and
  - v. Signature and date;
- 5. A person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP) and who is applying for a crossbow permit is exempt from the requirements of subsection (E)(4) and shall indicate "CHAMP" in the space provided for the medical certification on the crossbow permit application.
- F.** In addition to the requirements listed above, at the time of application an applicant who is applying for a crossbow permit shall pay the applicable fee required under R12-4-102.
- G.** All information and documentation provided by the applicant is subject to Department verification.
- H.** The Department shall deny a crossbow permit when the applicant:
  - 1. Fails to meet the criteria prescribed under this Section,
  - 2. Fails to comply with the requirements of this Section, or
  - 3. Provides false information during the application process.
- I.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- J.** The applicant claiming a temporary or permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- K.** When acting under the authority of a crossbow permit, the crossbow permit holder shall possess the permit, and exhibit the permit upon request to any peace officer, including wildlife managers and game rangers.
- L.** A crossbow permit holder shall not:
  - 1. Transfer the permit to another person, or
  - 2. Allow another person to use or possess the permit.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-301(D)(2), and 41-1005

### Historical Note

Adopted effective April 7, 1983 (Supp. 83-2). Repealed effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). New Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2).

### **R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**

- A.** For the purposes of this Section, the following definitions apply:
  - "Healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
    - 1. Medical Doctor,
    - 2. Doctor of Osteopathy,
    - 3. Doctor of Chiropractic,
    - 4. Nurse Practitioner, or
    - 5. Physician Assistant.
  - "Severe permanent disability" means one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.
- B.** The Challenged Hunter Access/Mobility Permit (CHAMP) allows a person with a severe permanent disability to perform one or more of the following activities:
  - 1. Discharge a firearm or other legal hunting device from a motor vehicle if, under existing conditions:
    - a. The discharge is otherwise lawful;

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- b. The motor vehicle is not in motion;
  - c. The motor vehicle is not on any road, as defined under A.R.S. § 17-101; and
  - d. The motor vehicle's engine is turned off.
2. Discharge a firearm or other legal hunting device from a watercraft, as defined under R12-4-501; provided the motor is turned off, the sail furled, or both; and progress has ceased.
    - a. The watercraft may be drifting as a result of current or wind, beached, moored, resting at anchor, or propelled by paddle, oars, or pole.
    - b. A person may use a watercraft under power to retrieve dead or wounded wildlife.
    - c. For the purposes of this subsection, "watercraft" does not include a sinkbox.
  3. Use off-road locations in a motor vehicle if use is not in conflict with federal or state statutes or regulations or local ordinances or regulations and the motor vehicle is used as a place to wait for game. A person shall not use a motor vehicle to chase or pursue game.
  4. Designate an assistant to track and dispatch a wounded animal, and to retrieve the animal, in accordance with the requirements of this Section.
- C.** The CHAMP holder shall comply with all applicable regulatory requirements. A CHAMP does not exempt the permit holder from any other applicable method of take or licensing requirement.
- D.** The CHAMP does not expire, unless:
1. The permit holder no longer meets the criteria for obtaining the CHAMP, or
  2. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose CHAMP is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a CHAMP shall apply by submitting an application to the Department. The application form is furnished by the Department and is available from any Department office and on the Department's website. The CHAMP applicant shall provide all of the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  3. Applicant's signature and date.
  4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant is a person with a severe permanent disability as defined under subsection (A), and
    - b. Provide the healthcare provider's:
      - i. Typed or printed name,
      - ii. Business address,
      - iii. Telephone number, and
      - iv. Signature and date;
- F.** In addition to the requirements listed above, at the time of application an applicant who is applying for a CHAMP shall pay the applicable fee required under R12-4-102.
- G.** All information and documentation provided by the applicant is subject to Department verification.
- H.** The applicant claiming a severe permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- I.** The Department shall deny a CHAMP when the applicant:
1. Fails to meet the criteria prescribed under this Section,
  2. Fails to comply with the requirements of this Section, or
  3. Provides false information during the application process.
- J.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed in A.R.S. Title 41, Chapter 6, Article 10.
- K.** When acting under the authority of the CHAMP, the permit holder shall possess and exhibit the permit upon request to any peace officer, including wildlife managers and game rangers.

## ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS

- L. The CHAMP holder shall ensure the CHAMP vehicle placard, issued with the CHAMP, is visibly displayed on the motor vehicle or watercraft when in use.
- M. The Department shall provide a CHAMP holder with a dispatch permit that allows the CHAMP holder to designate a licensed hunter as an assistant to:
  - 1. Dispatch and retrieve an animal wounded by the CHAMP holder, or
  - 2. Retrieve wildlife killed by the CHAMP holder.
- N. The CHAMP holder shall:
  - 1. Designate an assistant only after the animal is wounded or killed.
  - 2. Ensure the designation on the dispatch permit is in ink and includes:
    - a. A description of the animal,
    - b. The assistant's name and valid Arizona hunting license number,
    - c. The date and time the animal was wounded or killed, and
  - 3. Ensure compliance with all of the following requirements:
    - a. The site where the animal is wounded and the location from which tracking begins are marked so they can be identified later.
    - b. The assistant possesses the dispatch permit and a valid hunting license while tracking and dispatching the wounded animal. When acting under the authority of the dispatch permit, the assistant shall possess and exhibit the dispatch permit and hunting license upon request to any peace officer, including wildlife managers and game rangers.
    - c. The CHAMP holder is in the field while the assistant is tracking and dispatching the wounded animal.
    - d. The assistant does not transfer the dispatch permit to anyone except that the dispatch permit may be transferred back to the CHAMP holder.
    - e. Dispatch is made by a method that is lawful for the take of the particular animal in the particular season in accordance with requirements established under R12-4-304 and R12-4-318.
    - f. The assistant attaches the dispatch permit to the carcass of the animal and returns the carcass to the CHAMP holder, and the tag of the CHAMP holder is affixed to the carcass.
    - g. If the assistant is unsuccessful in locating and dispatching the wounded animal, the assistant returns the dispatch permit to the CHAMP holder. The CHAMP holder shall strike the name and authorization of the assistant from the dispatch permit.
- O. A dispatch permit may not be reused when all spaces for designation of an assistant are filled or the dispatch permit is attached to a carcass. The CHAMP holder may request another dispatch permit from the Department if:
  - 1. All spaces for assistants are filled,
  - 2. The dispatch permit is lost, or
  - 3. When the CHAMP holder needs another dispatch permit for another big game hunt.
- P. A CHAMP holder shall not:
  - 1. Transfer the permit to another person, or
  - 2. Allow another person to use or possess the permit.

### Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-301(B), and 41-1005

### Historical Note

Adopted effective October 9, 1980 (Supp. 80-5). Former Section R12-4-59 renumbered as Section R12-4-310 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-310 renumbered as R12-4-217 and amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-310 renumbered as R12-4-217 and amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Section repealed, new Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

### R12-4-218. Repealed

#### Historical Note

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective November 7, 1996 (Supp. 96-4).

### R12-4-219. Renumbered

#### Historical Note

## **ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**

Adopted as an emergency effective July 5, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 24, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2).

### **R12-4-220. Repealed**

#### **Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4).

## **ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS STATUTORY AUTHORITY**

### **17-231. General powers and duties of the commission**

#### **A. The commission shall:**

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

#### **B. The commission may:**

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

### **17-235. Migratory birds**

The commission shall prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the migratory bird treaty act and regulations issued thereunder, but the commission may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary.

### **17-245. Training courses**

The commission may:

1. Offer training courses on a voluntary basis to all persons as prescribed by rule.
2. Require any person whose hunting, fishing or guide license has been revoked or suspended to show a certificate of completion of a training course as a condition to issuance or renewal of a hunting, fishing or guide license.

### **17-333. License classifications; fees; reduced-fee and complimentary licenses; annual report; review**

A. The commission shall prescribe by rule license classifications that are valid for the taking or handling of wildlife, fees for licenses, permits, tags and stamps and application fees.

B. The commission may temporarily reduce or waive any fee prescribed by rule under this title on the recommendation of the director.

C. The commission may reduce the fees of licenses and issue complimentary licenses, including the following:

1. A complimentary license to a pioneer who is at least seventy years of age and who has been a resident of this state for twenty-five or more consecutive years immediately before applying for the license. The pioneer license is valid for the licensee's lifetime, and the commission may not require renewal of the license.
2. A complimentary license to a veteran of the armed forces of the United States who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a permanent service-connected disability rated as one hundred percent disabling.
3. A license for a reduced fee to a veteran of the United States armed forces who has been a resident of this state for one year or more immediately before applying for the license and who receives compensation from the United States government for a service-connected disability.
4. A youth license for a reduced fee to a resident of this state who is a member of the boy scouts of America who has attained the rank of eagle scout or a member of the girl scouts of the USA who has received the gold award.

D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the game and fish fund established by section 17-261.

E. On or before December 31 of each year, the commission shall submit an annual report to the president of the senate, the speaker of the house of representatives, the chairperson of the senate natural resources, energy and water committee and the chairperson of the house of representatives energy, environment and natural resources committee, or their successor committees, that includes information relating to license classifications, fees for licenses, permits, tags and stamps and any other fees that the commission prescribes by rule. The joint legislative audit committee may assign a committee of reference to hold a public hearing and review the annual report submitted by the commission.

### **17-334. Sale of licenses**

Hunting, fishing and other licenses shall be issued by such person as may be designated license dealers by the commission. The commission may suspend or revoke a dealer's license for failure to comply with rules specified by commission order.

**17-335. Blind resident; fishing license exemption**

A blind resident may fish without a license and is entitled to the same privileges as the holder of a valid license.

**17-335.01. Lifetime license and benefactor license**

A. For the purposes of this title, the commission may prescribe by rule a lifetime license and a benefactor license and privileges associated with the taking and handling of fish and wildlife in this state pursuant to section 17-333. All monies derived from the sale of lifetime licenses and benefactor licenses shall be deposited, pursuant to sections 35-146 and 35-147, in the wildlife endowment fund established by section 17-271.

B. A lifetime license, benefactor license and trout stamp may be denied or suspended pursuant to, and for the offenses described in, section 17-340.

C. A lifetime license, benefactor license and trout stamp remain valid if the licensee subsequently resides outside this state, but the licensee must pay the nonresident fee to purchase any additional privileges, including stamps, permits and tags required to hunt and fish in this state. Limits set by the commission on issuing nonresident stamps, permits or tags do not apply to stamps, permits or tags sold to a lifetime licensee.

**17-337. Hunting and fishing licenses; armed forces members and spouses**

A member or the spouse of a member of the armed forces of the United States who is on active duty and stationed in this state for either permanent or temporary duty may purchase a resident license permitting the taking of wildlife.

**17-337.01. Licenses for enrollees in the job corps**

Enrollees in the job corps created by the economic opportunity act of 1964, who are stationed within the state, shall be entitled to purchase a fishing license as provided by law for other residents of the state.

**17-340. Revocation, suspension and denial of privilege of taking wildlife; civil penalty; notice; violation; classification**

A. On conviction or after adjudication as a delinquent juvenile as defined in section 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may revoke or suspend a license issued to any person under this title and deny the person the right to secure another license to take or possess wildlife for a period of not to exceed five years for:

1. Unlawful taking, unlawful selling, unlawful offering for sale, unlawful bartering or unlawful possession of wildlife.
2. Careless use of firearms that resulted in the injury or death of any person.
3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards or other improvements while hunting, trapping or fishing.
4. Littering public hunting or fishing areas while taking wildlife.
5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.
6. A violation of section 17-303, 17-304, 17-316 or 17-341 or section 17-362, subsection A.
7. A violation of section 17-309, subsection A, paragraph 5 involving a waste of edible portions other than meat damaged due to the method of taking as follows:
  - (a) Upland game birds, migratory game birds and wild turkey: breast.
  - (b) Deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo) and peccary (javelina): hind quarters, front quarters and loins.
  - (c) Game fish: fillets of the fish.
8. A violation of section 17-309, subsection A, paragraph 1 involving any unlawful use of aircraft to take, assist in taking, harass, chase, drive, locate or assist in locating wildlife.

B. On conviction or after adjudication as a delinquent juvenile and in addition to any other penalties prescribed by this title:

1. For a first conviction or a first adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to five years.
2. For a second conviction or a second adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to ten years.
3. For a third conviction or a third adjudication as a delinquent juvenile, for unlawfully taking or wounding

wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife permanently.

C. In accordance with title 41, chapter 6, article 10 and notwithstanding subsection A of this section, a person against whom the commission imposes a civil penalty under section 17-314 for the unlawful taking, wounding, killing or possession of wildlife may be denied the right to obtain a license to take wildlife until the person has made full payment of the civil penalty.

D. On receiving a report from the licensing authority of a state that is a party to the wildlife violator compact adopted under chapter 5 of this title that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.

E. In carrying out this section, the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or denied. The notice may be served personally or by certified mail sent to the address appearing on the license.

F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.

G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.

H. Except for a person who takes or possesses wildlife while under permanent revocation, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor.

#### **17-342. Colorado river special use permit**

A. A person taking fish or amphibians for purposes other than for profit from or while on a boat or other floating device on all waters of the Colorado river south of the Nevada-Arizona boundary shall have in his possession a valid angling or fishing license issued by either the state of Arizona or the state of California. In addition to one of the above described licenses, such person shall have in his possession a valid California or Arizona-Colorado river special use permit, as provided by sections 17-343 and 17-344, which shall be obtained on payment of a fee to be fixed by the commission at not to exceed four dollars. Such a permit shall not be required to take fish or amphibians from canals, drains or ditches used to carry water from the Colorado river for irrigation or domestic purposes.

B. A person having in his possession a valid Arizona fishing license must have a California-Colorado river special use permit to legally fish the waters described in subsection A of this section. A person having in his possession a valid California angling license must have an Arizona-Colorado river special use permit to legally fish the waters described in subsection A of this section. Such special use permit when accompanied by the proper license will allow the holder to fish in any portion of such waters and permit him to enter the waters from any point.

C. Shore line fishing does not require a Colorado river special use permit as long as the fisherman remains on the shore of the state from which he holds a valid license and does not embark on the water.

#### **17-362. Guide license; violations; annual report**

A. A person shall not act as a guide without first satisfying the director of the person's qualifications and without having procured a guide license. A person who is under eighteen years of age shall not be issued a guide license.

B. If a licensed guide fails to comply with this title or is convicted of violating any provision of this title, in addition to any other penalty prescribed by this title:

1. For a first offense, the commission, after a public hearing, may revoke or suspend the guide license and deny the person the right to secure another license for a period of up to five years.

2. For a second offense, the commission, after a public hearing, may revoke or suspend the guide license and deny the person the right to secure another license for a period of up to ten years.

3. For a third offense, the commission, after a public hearing, may revoke or suspend the guide license and permanently deny the person the right to secure another license.

C. By January 10 of each year, or at the request of the commission, guides shall report to the department, on forms provided by the department, the name and address of each person guided, the number of days so employed and the number and species of game animals taken. A guide license shall not be issued to any person who has failed to deliver the report to the department for the preceding license year, or until meeting such requirements as the commission may prescribe.

#### **17-363. Practice of taxidermy; registration required; rules; register; revocation; suspension; civil penalty**

A. A person shall not engage in the business of a taxidermist for hire until that person registers with the department.

The department shall adopt rules to allow a person to register pursuant to this section.

B. A taxidermist shall:

1. Keep a register of the names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number and the date and number of each species of wildlife received.
2. Exhibit the register on request of an authorized representative of the department.
3. Maintain the register for five years after the date the wildlife was received.
4. File a copy of the register in English with the department on or before January 31 of each year.

C. After a public hearing, the commission may revoke or suspend the registration of a person who violates this section and deny the person the right to register with the department as a taxidermist for hire under subsection A of this section for a period not to exceed one year.

D. A person who violates this section is subject to a civil penalty of one hundred fifty dollars.

#### **41-1005. Exemptions**

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
2. Order or rule of the Arizona game and fish commission that does the following:
  - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
  - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
  - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.
17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.
18. Fees or charges established under section 41-511.05.
19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
20. Fee schedules established pursuant to section 36-3409.
21. Procedures of the state transportation board as prescribed in section 28-7048.
22. Rules made by the state department of corrections.
23. Fees prescribed pursuant to section 32-1527.
24. Rules made by the department of economic security pursuant to section 46-805.
25. Schedule of fees prescribed by section 23-908.
26. Procedure that is established pursuant to title 23, chapter 6, article 6.

27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.

29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.

30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.

31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.

32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.

33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.

34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.

B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.

3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

**ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS**  
**DEFINITIONS**

TITLE 17. GAME AND FISH  
CHAPTER 1. GENERAL PROVISIONS

Art. 1. Definitions and Authority of the State

**17-101. Definitions**

A. In this title, unless the context otherwise requires:

1. "Angling" means taking fish by one line and not more than two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not more than two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that any one person may lawfully take during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who meets any of the following:
  - (a) Advertises for guiding services.
  - (b) Holds himself out to the public for hire as a guide.
  - (c) Is employed by a commercial enterprise as a guide.
  - (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
  - (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that any one person may possess at one time.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person

who is:

- (a) A member of the armed forces of the United States on active duty and who is stationed in:
    - (i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.
    - (ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.
  - (b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.
  - (c) A youth who resides with and is under the guardianship of a person who is a resident.
18. "Road" means any maintained right-of-way for public conveyance.
  19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
  20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.
  21. "Taxidermist" means any person who engages for hire in mounting, refurbishing, maintaining, restoring or preserving any display specimen.
  22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
  23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
  24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
  25. "Youth" means a person who is under eighteen years of age.
  26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.
- B. The following definitions of wildlife shall apply:
1. "Aquatic wildlife" means fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
  2. "Big game" means wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
  3. "Fur-bearing animals" means muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
  4. "Game fish" means trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
  5. "Game mammals" means deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
  6. "Migratory game birds" means wild waterfowl, including ducks, geese and swans, sandhill cranes, all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
  7. "Nongame animals" means all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
  8. "Nongame birds" means all birds except upland game birds and migratory game birds.
  9. "Nongame fish" means all the species of fish except game fish.
  10. "Predatory animals" means foxes, skunks, coyotes and bobcats.

11. "Raptors" means birds that are members of the order of falconiformes or strigiformes and includes falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
12. "Small game" means cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
13. "Trout" means all species of the family salmonidae, including grayling.
14. "Upland game birds" means quail, partridge, grouse and pheasants.

## **ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS**

### **R12-4-101. Definitions**

**A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Arizona Conservation Education” means the conservation education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation.

“Arizona Hunter Education” means the hunter education course provided by Arizona Game and Fish Department in hunting safety, responsibility, and conservation meeting Association of Fish and Wildlife agreed upon reciprocity standards along with Arizona-specific requirements.

“Attach” means to fasten or affix a tag to a legally harvested animal. An electronic tag is considered attached once the validation code is fastened to the legally harvested animal.

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Bow” means a long bow, flat bow, recurve bow, or compound bow of which the bowstring is drawn and held under tension entirely by the physical power of the shooter through all points of the draw cycle until the shooter purposely acts to release the bowstring either by relaxing the tension of the toes, fingers, or mouth or by triggering the release of a hand-held release aid.

“Certificate of insurance” means an official document, issued by the sponsor’s and sponsor’s vendors, or subcontractors insurance carrier, providing insurance against claims for injury to persons or damage to property which may arise from, or in connection with, the solicitation or event as determined by the Department.

“Cervid” means a mammal classified as a Cervidae, which includes but is not limited to caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer; as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at [www.itis.gov](http://www.itis.gov).

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Crossbow” means a device consisting of a bow affixed on a stock having a trigger mechanism

to release the bowstring.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Electronic tag” means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.

“Export” means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Handgun” means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department as established under R12-4-111.

“Import” means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

“Limited-entry permit-tag” means a permit made available for a limited-entry fishing or hunting season.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Nonprofit organization” means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Pursue” means to chase, tree, corner or hold wildlife at bay.

“Pursuit-only” means a person may pursue, but not kill, a bear, mountain lion, or raccoon on

any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

“Pursuit-only permit” means a permit for a pursuit-only hunt for which a Commission Order does not assign a hunt number and the number of permits are not limited.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Validation code” means the unique code provided by the Department and associated with an electronic tag.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

**B.** If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck pronghorn” means a male pronghorn.

“Adult bull bison” means a male bison of any age or any bison designated by a Department employee during an adult bull bison hunt.

“Adult cow bison” means a female bison of any age or any bison designated by a Department employee during an adult cow bison hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of wildlife or the specifically identified wildlife the Department authorizes to be taken and possessed with a valid tag.

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

“Yearling bison” means any bison less than three years of age or any bison designated by a Department employee during a yearling bison hunt.

**ARIZONA STATE LAND DEPARTMENT**  
Title 12, Chapter 5, Articles 1, 2, 4, 5



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** February 6, 2024; March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** January 16, 2024

**SUBJECT: ARIZONA STATE LAND DEPARTMENT**  
Title 12, Chapter 5, Articles 1, 2, 4, 5

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### Summary

At the December 6, 2022 Council Meeting, the Council voted to require the State Land Department (Department) to conduct a review of the rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5 outside the Five-Year Review Report (5YRR) process pursuant to A.R.S. § 41-1056(D) and directed the Department to submit its report by July 1, 2023. On May 22, 2023, Council staff received an extension request from the Department to submit the 5YRR for Title 12, Chapter 5, Articles 1, 2, 4, and 5 by November 1, 2023. At the June 6, 2023 Council Meeting, the Council voted to grant the extension. On October 27, 2023, the Department submitted the report which is now before the Council now for consideration.

This 5YRR from the Department relates to forty-six (46) rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5. Specifically, the Articles reviewed cover the following areas:

- Article 1 – General Provisions
- Article 2 – Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona State Land Commissioner
- Article 4 – Sales
- Article 5 – Leases

The Department indicates it partially completed its prior proposed course of action through a rulemaking which became effective January 5, 2021.

### **Proposed Action**

In the current report, the Department is proposing to amend several rules and anticipates submitting the rulemaking to the Council by April 2024 and a separate rulemaking to the Council by March 2025.

**1. Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

According to the Department, most rules under review have no net negative economic impact and do not have a previously estimated economic, small business, or consumer impact statement (EIS) available for comparison. For the rules for which a 2020 EIS is available, the Department reports beneficial impacts to the Department, political subdivisions of the State, and independent businesses primarily due to realized efficiencies.

The Department also provides the following: As of the end of Fiscal Year 2023, the Department held: 345 Agricultural Leases covering 157,439,161 acres of Trust Land which generated \$4,339,836 in income; 1203 Grazing Leases and Permits covering 8,333,585,519 acres which generated \$2,962,499 in income; 292 Commercial Leases covering 73,697,182 acres which generated \$32,504,784 in income; 5,422 Right-of-Way Grants and Permits covering 87,970,595 acres which generated \$11,308,524 in income; 773 Mineral Leases covering 409,210,731 acres of Trust Land which generated \$14,317,086 in rental income; 43 auctions for sales of 4,760,441 acres of Land and generated revenue in the amount of 374,719,009 from those land sales.

The rental payments received from the above leases are deposited into the Trust's expendable fund and distributed directly to the beneficiaries annually. The payments received from the above land sales are deposited into the Trust's permanent fund, which is invested by the Treasurer, and proceeds therefrom are distributed to beneficiaries in accordance with formulas established in the Constitution. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provide opportunities for local economies via the labor force and the communities of homes, retail, and offices that are built thereon.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department contends that the rules' probable benefits outweigh the probable costs, and the rules impose the least burden and costs to persons regulated by the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are generally clear, concise, and understandable except for the following rules:

- **R12-5-102:** As currently written, the “computation of time” in subsection (A) is confusing and unnecessarily complex – it also lacks specificity as to what agency decisions, or processes this provision would apply.
- **R12-5-207:** The rule is concise and understandable, though it could benefit from elimination of the reference to “tapes” to improve clarity.
- **R12-5-214:** The rule is concise and understandable, although clarity could be improved by articulating that only the hearing officer may exercise judicial notice.
- **R12-5-402:** The rule is clear, concise, and understandable. Notably, however, Subsection (C) is reflective of A.R.S. § 37-233(C) in that the statute allows the Commissioner to require funds to be advanced for the purchase of state land under certain circumstances, while the rule requires it.
- **R12-5-404:** The rule needs clarification because it is not written in complete sentences. Also, the rule is not entirely concise because subsection (E) is redundant of statute.
- **R12-5-405:** Subsection (A) of the rule is clear, but the concept within subsection (B) of the rule is better elaborated in A.R.S. § 37-247, and the reference to R12-5-102(B) regarding computation of timeframes is not needed here.
- **R12-5-406:** The rule is mostly concise and understandable, but: 1) clarity could be gained by recognizing that, due to escrows, the release or a satisfaction of a lien or mortgage may come prior to the completion of the assignment and not at the time of application and 2) the elimination of subsection (C), which is redundant of A.R.S. 37-244(C) would improve conciseness.
- **R12-5-413:** The rule is concise and understandable, but the rule’s clarity could be improved by differentiating brokers representing non-applicant bidders and those representing applicant bidders.
- **R12-5-508:** The rule is clear and understandable, but it is not concise because it partially reiterates what is articulated in A.A.C. R12-5-104.
- **R12-5-509:** The rule is not easily understood as it is verbose, outdated and is not organized well. The rule is not clear because the effective date of a lease is never the date of application upon open land, but rather the date both parties have signed the lease; the date of administrative approval differs depending on the type of lease. While all of these dates fall under the “or such other subsequent date as the Commissioner may prescribe,” it is not clear what those dates are. The rule is not concise because mention of the Department seal being affixed to lease documents is redundant of A.R.S. § 37-103.

- **R12-5-524:** The rule is understandable, but the first paragraph is redundant of A.R.S. 37-255. Also, additional information could add clarity to the process of filing mortgages and liens with the Department.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- **R12-5-402:** Subsection (A) is inconsistent with agency operations because it limits an application to one section or subdivision of a section, and ASLD allows an application to cover more than one section or subdivision thereof for the sake of efficiency. Subsections (B) through (D) are consistent.
- **R12-5-408:** The rule is mostly consistent, except that Subsection (A)(1) references the filing fee in A.R.S. § 37-108(A)(9)(c) whereas A.A.C. R12-5-1201 prescribes Department filing fees.
- **R12-5-509:** This rule was created when the agency largely transacted and executed agreements with paper; reflected in several portions of this section. Also, the rule is inconsistent with agency operations, as receipts are not provided unless requested following execution of the lease or permit. Further, where it notes that the rental statement is sent with a copy of lease for execution by the lessee or permittee, in actuality the Department mostly sends a copy of the rental statement under separate cover prior to sending out the lease documents.
- **R12-5-513:** The rule is mostly consistent. It is inconsistent with agency operations in that the Department does not require a copy of the lease or permit to be provided at the time of application, and the Department does not allow for an assignment of an undivided interest.
- **R12-5-517:** The rule is mostly consistent, although it is inconsistent with agency operations in that grazing lease rentals are not fixed amounts (as they are based on a formula derived from an index and computed annually), and grazing and agricultural leases currently do not contain rental fee amounts in the lease documents (however, the Department is considering changing this practice).

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are generally effective in achieving their objectives except for the following rules:

- **R12-5-402:** Subsection (A) is not effective as it is inconsistent with agency operations as outlined above. Subsections (B) through (D) are effective.
- **R12-5-533:** The rule is effective, but misplaced within the Chapter, as it does not only apply to leases.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Department indicates the rules are generally enforced as written except for the following rules:

- **R12-5-402:** Subsection (A) is not enforced as it is inconsistent with agency operations as outlined above. Subsections (B) through (D) are enforced.
- **R12-5-406:** The rule is mostly enforced except: per Subsection (B)(3), the Department does not require release or satisfaction of a lien of mortgage to be submitted at the time of application because most applicants assigning a CP will submit such documentation simultaneously at closing; and per Subsection (B)(4), as the Department does not citizenship-test its applicants.
- **R12-5-408:** The rule is enforced except that the requirement of the drawing size of the survey plat and the format of same mentioned in Subsection (A)(3) is only enforced when necessary.
- **R12-5-509:** The rule is mostly enforced, except that an application for reclassification does not serve as an effective date for a new lease.
- **R12-5-513:** The rule is mostly enforced, except where it is inconsistent with agency operations, as noted above.
- **R12-5-517:** The rule is enforced as written, except as to grazing leases as outlined above.

**9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there are no federal laws applicable to these rules.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

For those rules which were amended in 2021, the Department indicates the rules are in compliance with A.R.S. § 41-1037. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

**11. Conclusion**

The Council voted to require the Department to conduct a review of the rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5 outside the 5YRR process pursuant to A.R.S. § 41-1056(D). This 5YRR from the Department relates to forty-six (46) rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5. Specifically, the Articles reviewed cover the following areas: Article 1 – General Provisions; Article 2 – Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona State Land Commissioner; Article 4 – Sales; and Article 5 – Leases.

The Department has identified rules that are not clear, concise, understandable, consistent, effective, and enforced as written. The Department proposes to amend these rules in two separate rulemakings, the first of which will be submitted to the Council by April 2024 and the second by March 2025.

Council staff recommends approval of this report.



# **ARIZONA STATE LAND DEPARTMENT**

*"Serving Arizona's Schools and Public Institutions Since 1915"*

## **A.R.S. § 41-1056(D) Rule Review Report**

Submitted to

### **THE GOVERNOR'S REGULATORY REVIEW COUNCIL**

of

**Arizona Administrative Code  
TITLE 12 – Natural Resources  
CHAPTER 5 – State Land Department**

**Article 1 – General Provisions  
Article 2 – Practice and Procedure in Administrative Hearings for Protesting  
Auctions Before the Arizona State Land Commissioner**

**Article 4 – Sales  
Article 5 – Leases**

*Due November 1, 2023*

## Summary

A.R.S. § 41-1056(D) states: “The council may review rules outside of the five-year review process if requested by at least four council members.” At a meeting of the Governor’s Regulatory Review Council (“GRRC”) on December 6, 2022, the Council voted to require the Arizona State Land Department (“Department”) to review all of its rules in Title 12, Chapter 5 according to the following schedule: Articles 1-11 are due no later than July 1, 2023, and Articles 12-25 are due no later than November 1, 2023. At the meeting of the GRRC on June 6, 2023, the Council voted to extend the due date of the § 41-1056(D) Report of all Articles to November 1, 2023. The review of Articles 1, 2, 4 and 5 are contained herein. The review of Articles 7, 8, 9, and 11 are submitted separately to and simultaneously with this report as a revision to the 5-year rule report of those same Articles which was originally due July 31, 2022, and returned to the Department in November 2022.

The Department, while not a regulatory agency, is a public agency that should ensure that the public has clear understanding and consistent guidelines for State Trust land (“STL”) transactions.. The Department serves as the trustee of the State’s 9.2 million acres of STL and the appurtenant natural resources. The trust status of STL imposes obligations and constraints that would not apply if the State held the land outright. These obligations and constraints are outlined in the extensive and detailed provisions of Sections 24-30 of the State’s Enabling Act, Article X of the Arizona Constitution, statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate), and a century of case law.

STL, managed for its highest and best use, while also preserving its finite natural resources, is supported by the laws of the Enabling Act, Constitution, and judiciary of this state. The Commissioner is granted broad statutory discretion in her decision-making powers and authorities; which are necessary for the management of a perpetual trust in a time of increasing demand for all types of land uses. The Department also has a public duty to ensure that its expectations for applicants, lessees and permittees are clear and consistent. To that end, the Department is proposing amendments to some of our rules within Title 12, Chapter 5 in order to conform with changes to statutes and internal processes and to clarify language and drafting nuances where necessary.

Under this Rule Review Report, the Department evaluated 46 rules broken down as follows: 9 rules within Article 1; 18 rules within Article 2; 7 rules within Article 4; and 12 rules within Article 5. The Department plans to amend many of these rules in a rulemaking that shall be initiated via submission to the Governor’s Office no later than March 1, 2024.

The Department, under this new administration, will be creating a standardized framework for all future rule writing and reviews; which has been lost over the past few decades. The Department also recognizes that there is great opportunity for improvement to several internal

work flow processes; and has begun identifying areas of necessary improvements that will ensure agency transparency, accountability and efficiency in all surface and subsurface STL transactions. As the Department works through these improvements over the course of the next few years, it will return to GRRC with proposed conforming improvements to rule, providing greater clarity to customers and stakeholders.

## **Factors analyzed pursuant to A.A.C. R1-6-301(A)**

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

# RULE ANALYSIS

## Article 1 General Provisions

### A.A.C. Rule 12-5-101 Definitions

1. **Statutory Authority:**  
A.R.S. § 37-132
2. **Objective:**  
The objective of the rule is to define terms to help with legal interpretation of the rules.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts of the 2020 proposed rulemaking to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

**10. Previous 5yRR Report Course of Action:**

ASLD proposed to amend this rule in the previous 5YRRR, and ASLD completed this action in its 2020/21 Rulemaking.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because definitions serve to improve clarity and understandability of the rules without harming stakeholders, customers, or the Department.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

As part of ASLD's efforts to improve customer clarity and interface with the agency, ASLD intends to amend this rule to include definitions from other parts of the department's regulations, but it does not intend to amend the definitions subject to the current analysis. This rule will be amended in April, 2024.

## A.A.C. Rule 12-5-102 Computation of Extension of Time

1. **Statutory Authority:**  
A.R.S. § 37-132
2. **Objective:**  
The objective of the rule is to inform stakeholders how the Department computes a time period prescribed or allowed under the rules. It also describes the Commissioner’s authority to extend any time period.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
As currently written, the “computation of time” in subsection (A) is confusing and unnecessarily complex – it also lacks specificity as to what agency decisions, or processes this provision would apply.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule’s impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
11. **Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule’s probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule offers specificity

regarding the computation of time periods that is fair and balanced in its approach to affording customers adequate time to act without becoming unduly lengthy.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1137 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD intends to consider revisions to subsection (A) to clarify it in list form, as well as add revisions that would add a set amount of time to the time period calculation when service of process is given by certified mail. This rule will be amended in April, 2024.

## **A.A.C. Rule 12-5-103 Records; Correction of Errors; Public Docket; Removal of Records**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objectives of the rule are to: establish standards in which documents submitted to the Department become part of the Department's records, establish guidelines for correcting clerical errors within documents, describe the process for a person to obtain a copy of a public docket, and prohibit the removal of documents from the Department.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**

In the previous 5YRRR, the Department proposed to amend the rule to reflect acceptance of documents physically and electronically filed. The Department completed this action in its 2020/21 rulemaking.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from providing uniform guidance regarding filings, acceptance of records and correction of errors, without which a layperson would not have clear direction or ability to transact with the Department in an efficient and effective manner.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

**A.A.C. Rule 12-5-104 Application Forms; Legal Status; Submission of Applications; Applications Confer NO Rights**

**1. Statutory Authority:**

A.R.S. § 37-132

**2. Objective:**

The objective of the rule is to inform customers how to file an application or other required documents with the Department, the information required, and the rights, if any, granted to an applicant.

**3. Effectiveness:**

The rule is effective.

**4. Consistency:**

The rule is consistent.

**5. Enforcement policy:**

The rule is enforced.

**6. Clear, concise, and understandable:**

The rule is clear, concise, and understandable.

**7. Written criticisms:**

There have been no written criticisms of this rule received in the previous five years.

**8. Economic impact:**

The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.

**9. External Analysis of impact on business competitiveness:**

There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

**10. Previous 5yRRR Report Course of Action:**

In the previous 5YRRR, the Department intended to amend Subsection (C) of this rule to reflect the Department's practice of receiving documents electronically. The Department completed this action, in addition to further changes to the rule.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from requiring applications to be uniform and contain certain information that allows the Department to consider proposed transactions in a fair and consistent manner, helping customers and the Department's objective.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

ASLD intends to amend this rule to include application information that is currently located elsewhere in the Chapter, as well as provide clarity to applicants of the Department's expectations following incomplete application filings. The Department has experienced some difficulties in follow-up from applicants who have submitted incomplete applications, which can unfairly suspend parcel(s) of land for other applicants/uses. Applications can sit in suspense for years as a result. This rule will be amended in April, 2024.

## **A.A.C. Rule 12-5-105 Manner of Signing Documents Before the Department**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of the rule is to describe signature requirements and limitations.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to amend this rule by deleting Subsection (C). It completed this amendment in the 2020/21 rulemaking.

- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule’s probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from offering clarity on the execution of documents before the Department while costs are minimal given that all documents must be signed anyway to be effective per the Statute of Frauds.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
- 13. A.R.S. § 41-1037 Compliance:**  
This rule, as amended in 2021, complies with A.R.S. § 41-1037.
- 14. Course of Action Proposed:**  
The Department intends to strike Subsection (B) of this rule and simultaneously incorporate reference to signing by authorized representatives into Subsection (A) in order to make the rule more concise, as well as consider an addition of a timeline requirement for executing documents sent out by the Department to avoid lengthy delays which have historically held up Department processes and encumbered land. The encumbrance inhibits other potential businesses/applicants from applying for those sections of parcels. This rule will be amended in April, 2024.

## A.A.C. Rule 12-5-106 Assignments; Subleases

1. **Statutory Authority:**  
A.R.S. § 37-132: § 37-286
2. **Objective:**  
The objective of the rule is to describe the requirements for assigning or subleasing a lease.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
The Department proposed to amend the rule to add language to subsection (A)(2) that notes that Commissioner approval of an assignment or sublease in writing only applies if the assignment or sublease contract does not otherwise authorize same without Commissioner approval. The Department completed this action in its 2021/21 rulemaking.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derived from requiring assignors and sublessors of State Land to obtain approvals and meet certain criteria allows the Department to consider the implications of such transactions on the reversionary interest in the land, which outweighs the burden of allowing such transactions to occur without the Department's knowledge or consent.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

The Department intends to add to this rule to further delineate how the Department treats assignments, partial assignments, and subleases uniquely; to outline applicant requirements for and restrictions to assignments and subleases; and to articulate joint and several liability in a sublease scenario. This rule will be amended in April, 2024.

## A.A.C. Rule 12-5-107 Fees; Remittances

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-288(C)
- 2. Objective:**  
The objective of the rule is to explain how fees and other remittances are paid to the Department.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to amend Subsection (A) of the rule to allow for filing fee to be paid by credit card. The Department completed this action in its 2020/21 rulemaking along with other amendments clarifying that receipt of payment would equate with the

postmarked date or electronic receipt of payment and removal of the requirement to hand deliver payments for them to be credited.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule allows for the most expansive forms of payment currently possible within Department operations.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-108 Predecision Administrative Hearing**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of the rule is to describe the discretionary ability of the Commissioner to hold a pre-decision administrative hearing.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule allows the Department to use a hearing as an effort to gather the best information available before

making a decision, which benefits both customers and the Department in the execution of its fiduciary responsibilities.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-109 Rejection of Hearing**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of the rule is to describe the Commissioner's authority to reject the request for a hearing.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the rule allows the Commissioner to decide if a subject matter is not applicable to a hearing, saving everyone time and resources and expediting the initiation of other remedies, if desired.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

**Article 2 Practice and Procedure in Administrative Hearings for Protesting Auctions  
Before the Arizona State Land Commissioner**

**A.A.C. Rule 12-5-201 Applicability**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to explain the purpose of Article 2 rules, which is the process of protesting an auction.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to change language to improve clarity. The Department completed this action in its 2020/21 rulemaking.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides clarity of purpose without providing any restrictive or regulatory activity.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
- 13. A.R.S. § 41-1037 Compliance:**  
This rule, as amended in 2021, complies with A.R.S. § 41-1037.
- 14. Course of Action Proposed:**  
ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-202 Appointment of a Hearing Officer**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to explain who may serve as a hearing officer.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the benefit derives from the ability to appoint a hearing officer, which has the potential to expedite a hearing in the absence of the Commissioner, while having no seemingly negative consequence to same.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-203 Ex Parte Communication**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to explain the prohibition on communication between parties and decision makers in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it restricts activity that

is similarly restricted in judicial proceedings to curtail actual and perceived bias during an impartial hearing.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## A.A.C. Rule 12-5-204 Failure to Appear

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to explain to potential stakeholders the powers of a hearing officer in the event a party fails to appear.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it allows the hearing

officer discretion to vacate or continue a hearing in lieu of alternatives such as rescheduling, which can be time- and resource-intensive.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## A.A.C. Rule 12-5-205 Representation

1. **Statutory Authority:**  
A.R.S. § 37-132; § 37-301
2. **Objective:**  
The objective of the rule is to identify appropriate representation for different types of parties in hearings held pursuant to A.R.S. § 37-301.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
11. **Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it ensures all parties are adequately represented depending on their legal status.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department intends to amend the rule to conform to Arizona Supreme Court 31.3(c)(5) by March, 2025.

## **A.A.C. Rule 12-5-206 Notice of Hearing**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to explain which information shall be included in a Notice of hearing and that an applicant for a sale or long-term lease which is the subject of a contested auction is a party to a hearing for hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
ASLD proposed to amend the rule to make minor spelling and grammatical changes for clarity. When ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking, it did not deem the edits sufficient to justify incorporation into the 2020/21 rulemaking.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it requires the

Department to issue a Notice of Hearing with certain information to provide clarity and consistency to interested parties, which is helpful, and it identifies applicants as parties which is important given the applicant's unique interest and position leading up to an auction.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-207 Hearing Record**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to establish the requirements of maintaining a hearing record for hearings held pursuant to A.R.S. § 37-301 and making those records available to the public thereafter.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is concise and understandable, though it could benefit from elimination of the reference to “tapes” to improve clarity.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule’s impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.

- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule’s probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it allows persons to obtain a hearing record easily and requires the Department to record hearings and produce them as requested, which is in line with Public Records laws.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
- 13. A.R.S. § 41-1037 Compliance:**  
This factor does not apply as this rule was adopted prior to July 30, 2010.
- 14. Course of Action Proposed:**  
The Department intends to amend the rule to clarify the way to obtain copies of the record and to eliminate the reference to “tapes” and other archaic references.  
This rule will be amended in March, 2025.

## A.A.C. Rule 12-5-208 Consolidation

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to explain that multiple protests of the same auction may be consolidated into one hearing.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because there is a substantial

time and resource benefit to the Department and all parties in the ability to consolidate protests without having a negative effect on either.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-209 Filing**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to provide requirements for making filings with the Department for hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides uniform

guidelines for hearing submissions, ensuring that any information can be useful for the process and fair to all parties involved.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD intends to amend the rule to accommodate electronic submissions of documents. This rule will be amended in March, 2025.

## **A.A.C. Rule 12-5-210 Service; Proof of Service**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to describe the requirements of service of process for certain papers filed in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to amend this rule to make minor grammatical changes for clarity and to reflect a change in the Division of the Attorney General's office which shall receive service of a notice of hearing per subsection (D). The Department accomplished

the latter change, but no further changes were deemed necessary to justify incorporation into the 2020/21 rulemaking.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides a consistent process for service of process, benefitting all parties to a hearing subject to Article 2.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## A.A.C. Rule 12-5-211 Subpoenas

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to authorize the issuance of and establish procedures for subpoenas in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. However, when ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020, it amended (B)(3) to reference "if any" after "subpoenas".

- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it provides a consistent and thoughtful method of subpoena useful for these Article 2 hearings.
  
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
  
- 13. A.R.S. § 41-1037 Compliance:**  
This rule, as amended in 2021, complies with A.R.S. § 41-1037.
  
- 14. Course of Action Proposed:**  
ASLD does not propose any remedial action on this rule.

## **A.A.C. Rule 12-5-212 Procedure at Hearing**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to describe the procedures for hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. However, when ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020, it made grammatical changes to the rule.

- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it outlines the method the Department employs in these hearings that allows for the participation of all parties.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
- 13. A.R.S. § 41-1037 Compliance:**  
This rule, as amended in 2021, complies with A.R.S. § 41-1037.
- 14. Course of Action Proposed:**  
Since this rule relates to the procedure at a hearing, ASLD intends to amend the rule in subsection (C) by relocating the second sentence pertaining to the availability of the record of the hearing to R12-5-207 which pertains to the hearing record. This rule will be amended in March, 2025.

## A.A.C. Rule 12-5-213 Evidence

1. **Statutory Authority:**  
A.R.S. § 37-132; § 37-301
2. **Objective:**  
The objective of the rule is to outline the rules of evidence for hearings held pursuant to A.R.S. § 37-301.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
11. **Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it affords a fair process

for presenting evidence to be used in a hearing in a way that allows for consistency and equality in the determination of all facts relevant to the decision.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD intends to consider changes to this rule to accommodate the acceptance of electronic media as evidence, pending an assessment regarding whether the current rule's language can be construed to include electronic media and whether the Department can accommodate the preservation of all or certain electronic media in a hearing file. This rule will be amended in March, 2025.

## **A.A.C. Rule 12-5-214 Judicial Notice; Technical facts**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to authorize a hearing officer to take judicial notice of certain facts in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is concise and understandable, although clarity could be improved by articulating that only the hearing officer may exercise judicial notice.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it allows a hearing

officer the power of judicial notice, which is an expeditious method of ascertaining facts also commonly utilized in court proceedings.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not propose any remedial action on this rule.

## A.A.C. Rule 12-5-215 Stipulations

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to allow parties to agree to procedural or substantive matters in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
The previous Economic Impact Statement submitted along with the rulemaking of this rule in 2020 noted beneficial, albeit minimal, economic impacts to the Department, Political subdivisions of the State, and independent businesses primarily due to realized efficiencies, such as processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department. There is no additional economic impact of this rule in its current, amended form.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. However, when ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020, it made a single, grammatical change to the rule.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it offers an expeditious means for parties to agree to certain facts or procedural method in these hearings and no burden is imposed.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This rule, as amended in 2021, complies with A.R.S. § 41-1037.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-216 Recommended Decision**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to inform parties of the timeframe for recommendations made to the Commissioner by a hearing officer in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the date by which a

recommended decision must be given respects both the consideration needed from a hearing date and the upcoming auction date, which the hearing may affect.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## A.A.C. Rule 12-5-217 Decision

1. **Statutory Authority:**  
A.R.S. § 37-132; § 37-301
2. **Objective:**  
The objective of the rule is to inform parties of the content requirements of Commissioner decisions made in hearings held pursuant to A.R.S. § 37-301.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
11. **Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because it requires the final

decision in these hearings to reflect the most information possible so that the parties to the hearing can understand the outcome.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## **A.A.C. Rule 12-5-218 Rehearing of Decision**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-301
- 2. Objective:**  
The objective of the rule is to establish conditions for which a rehearing of a decision may take place in hearings held pursuant to A.R.S. § 37-301.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
No specific changes were proposed in the previous 5YRRR. ASLD considered the entirety of Articles 1 and 2, including this rule, for a proposed rulemaking initiated in 2020. This rule ultimately was not included in that rulemaking because there were no substantive changes to be made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because while it allows for a

rehearing to alleviate a perceived incorrect decision, it limits the reasons for such a rehearing to those things that would have substantive effect.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as this rule was adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

ASLD does not intend to take any action on this rule at this time.

## Article 4 Sales

### A.A.C. Rule 12-5-402 Conditions for Filing Application

1. **Statutory Authority:**  
A.R.S. § 37-132(A)(1); § 37-233
2. **Objective:**  
The objective of this rule is to outline conditions for filing a purchase application for State Land.
3. **Effectiveness:**  
Subsection (A) is not effective as it is inconsistent with agency operations. Subsections (B) through (D) are effective.
4. **Consistency:**  
Subsection (A) is inconsistent with agency operations because it limits an application to one section or subdivision of a section, and ASLD allows an application to cover more than one section or subdivision thereof for the sake of efficiency. Subsections (B) through (D) are consistent.
5. **Enforcement policy:**  
Subsection (A) is not enforced. Subsections (B) through (D) are enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable. Notably, however, Subsection (C) is reflective of A.R.S. § 37-233(C) in that the statute allows the Commissioner to require funds to be advanced for the purchase of state land under certain circumstances, while the rule requires it.
7. **Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
8. **Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

**10. Previous 5yRRR Report Course of Action:**

The previous 5YRRR noted the following: “While subsection (A) of the rule is misleading in that it is inconsistent with agency operations, it is well known that the Department does not enforce this subsection which is to the advantage of both the Department and its purchase applicants. Nothing in this rule costs staff additional time and resources.” Rules under Article 4 were considered for a rulemaking effort following a rulemaking to amend Articles 1 & 2. A rulemaking for Article 4 did not occur.

**11. Cost v. Benefit and Least Burden Analyses:**

ASLD contends that the rules’ probable benefits outweigh their probable costs and impose the least burden and costs to persons regulated by the rule (absent subsections (A) and (C) which are unnecessary) because it provides the Department with information that is necessary to consider an application, in the case of subsection (B), and it limits a party from withdrawing an application that the Department has agreed to take to auction by expending considerable resources, in the case of subsection (D), neither of which create an undue burden on a party seeking to purchase State Land.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department intends to amend the rule to eliminate subsections (A) and (C). This rule will be amended in March, 2025.

## **A.A.C. Rule 12-5-403 Restrictions Subsequent to Filing Application to Purchase**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of this rule is to restrict any state land Lessee from adversely impacting lands for which an application to purchase has been made by that same Lessee.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
Rules under Article 4 were to be considered for the Department's 2020 rulemaking effort. A rulemaking for this rule was not considered necessary and was not completed.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that the rules' benefits outweigh their costs because an applicant to purchase state land has no interest in the land due to the existence of the application; so if there is no interest to dispose of or encumber, there is no cost to the applicant. On the other hand, premature dispositions or encumbrances of state land prior to sale would devalue the land and therefore be costly to the Trust.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## **A.A.C. Rule 12-5-404 Responsibility of the Purchaser**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-244; § 37-246
- 2. Objective:**  
The objective of this rule is to inform purchasers of State Land of certain responsibilities post-auction.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule needs clarification because it is not written in complete sentences. Also, the rule is not entirely concise because subsection (E) is redundant of statute.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
Rules under Article 4 were to be considered for the Department's 2020 rulemaking effort. A rulemaking for this rule was not considered necessary and was not completed.
- 11. Cost v. Benefit and Least Burden Analyses:**  
While there are costs associated with a customer's compliance with this rule (e.g. recordation, payment of taxes, insurance, etc.), some of these costs are required of the Department to impose upon a purchaser as a conditions to a Certificate of Purchase, and all of these costs are standard in the real estate industry and essential to discharge of the

Department's fiduciary duty to the Trust which mandates protection of the Trust assets until a Patent has been issued.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department proposes to amend this rule to create complete sentences; to require a purchaser of state land to furnish a copy of the recorded CP to the Department; to require a holder of a CP to provide proof of payment of those items enumerated under subsection (B) (which is already a requirement under R12-5-405(A)); to eliminate subsection (E); and to eliminate the requirement of a CP holder to acquire the consent of the Department in situations when the Right-of-way would not survive the cancellation of the CP. This rule will be amended in March, 2025.

**A.A.C. Rule 12-5-405 Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of this rule is to cause a holder of a Certificate of Purchase to prove annually that taxes and assessments against any land subject to a Certificate of Purchase have been paid for the year.
- 3. Effectiveness:**  
The rule is partially effective. See below.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
Subsection (A) of the rule is clear, but the concept within subsection (B) of the rule is better elaborated in A.R.S. § 37-247, and the reference to R12-5-102(B) regarding computation of timeframes is not needed here.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
Rules under Article 4 were to be considered for a rulemaking effort following a rulemaking to amend Articles 1 & 2. A rulemaking for Article 4 did not occur.

- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that the rules' benefits outweigh their costs because subsection (A) only requires production of a document, i.e. proof of a payment of taxes, therefore there is minimal costs to customers while the benefit to the Department to ensure there is no default of tax payments under a CP is substantial as it allows the Department to protect the trust.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
- 13. A.R.S. § 41-1037 Compliance:**  
This factor does not apply as the rules were adopted prior to July 30, 2010.
- 14. Course of Action Proposed:**  
The Department intends to eliminate this rule after it relocates subsection (A) to R12-5-404(B). This rule will be amended in March, 2025.

## A.A.C. Rule 12-5-406 Assignment of a Certificate of Purchase

- 1. Statutory Authority:**  
A.R.S. § 37-132; A.R.S. § 37-244
- 2. Objective:**  
The objective of this rule is to inform Certificate of Purchase holders who wish to assign their CP of the conditions that would prohibit assignment.
- 3. Effectiveness:**  
The rule is mostly effective.
- 4. Consistency:**  
The rule is mostly consistent, except for those parts not enforced as explained below.
- 5. Enforcement policy:**  
The rule is mostly enforced except: per Subsection (B)(3), the Department does not require release or satisfaction of a lien of mortgage to be submitted at the time of application because most applicants assigning a CP will submit such documentation simultaneously at closing; and per Subsection (B)(4), as the Department does not citizenship-test its applicants.
- 6. Clear, concise, and understandable:**  
The rule is mostly concise and understandable, but: 1) clarity could be gained by recognizing that, due to escrows, the release or a satisfaction of a lien or mortgage may come prior to the completion of the assignment and not at the time of application and 2) the elimination of subsection (C), which is redundant of A.R.S. 37-244(C) would improve conciseness.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.

- 10. Previous 5yRR Report Course of Action:**  
Rules under Article 4 were to be considered for the 2020 rulemaking effort. A rulemaking for this rule did not occur.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The benefit to the Trust of this rule far exceeds the costs to customers who are CP holders because allowing a transfer of a CP when there are potential defaults under the CP would adversely affect the Trust and the lands under the CP.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.
- 13. A.R.S. § 41-1037 Compliance:**  
This factor does not apply as the rules were adopted prior to July 30, 2010.
- 14. Course of Action Proposed:**  
The Department intends to amend the rule to adopt grammatical changes, to clarify Subsection (B)(3), to amend (B)(4) to eliminate the reference to citizenship-testing of applicants, and to eliminate subsection (C). This rule will be amended in March, 2025.

## A.A.C. Rule 12-5-408 Partial Patent

- 1. Statutory Authority:**  
A.R.S. § 37-132(A); § 37-251(B)
- 2. Objective:**  
The objective of this rule is to inform Certificate of Purchase holders of the conditions to receive a partial patent.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is mostly consistent, except that Subsection (A)(1) references the filing fee in A.R.S. § 37-108(A)(9)(c) whereas A.A.C. R12-5-1201 prescribes Department filing fees.
- 5. Enforcement policy:**  
The rule is enforced except that the requirement of the drawing size of the survey plat and the format of same mentioned in Subsection (A)(3) is only enforced when necessary.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
Rules under Article 4 were to be considered for the 2020 rulemaking effort. A rulemaking for this rule did not occur.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The benefit of this rule to the Department and its customers is primarily that it allows the Department to process an application more efficiently for a partial patent. While there are costs associated with the due diligence required, the Department needs this information to

comply with statute and to adequately protect the remainder of the lands under a CP and any surrounding state lands.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department intends to amend the rule to reference the correct rule providing for filing fees; to require the information required in (A)(3) to be provided in digital format; to make grammatical changes; and to consider elimination of Subsection (E) in exchange for a Department-wide approach to treating incomplete applications. This rule will be amended in March, 2025.

## **A.A.C. Rule 12-5-413 Real Estate Broker Commissions**

- 1. Statutory Authority:**  
A.R.S. § 37-132(A)(1); § 37-132(B)(2)
- 2. Objective:**  
The objective of this rule is to provide criteria by which private real estate brokers may assist the Department in marketing state land for sale and long-term lease auctions and by which those same brokers may be paid a commission for doing so.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is concise and understandable, but the rule's clarity could be improved by differentiating brokers representing non-applicant bidders and those representing applicant bidders.
- 7. Written criticisms:**  
There have been no written criticisms of this rule received in the previous five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. The current state of this rule does not have a net negative economic impact.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
Rules under Article 4 were to be considered for the 2020 rulemaking effort. A rulemaking for this rule did not occur.
- 11. Cost v. Benefit and Least Burden Analyses:**  
ASLD contends that this rule's probable benefits outweigh its probable costs and impose the least burden and costs to persons regulated by the rule because the Department pays a

fee to real estate brokers who bring clients to purchase auctioned lands for sale or long-term lease, which is a benefit to the Department and the bidders.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department intends to amend the rule as follows: to differentiate broker requirements for brokers representing applicant and non-applicant bidders; to require submission of broker forms via electronic means versus in person document filings at the Department's public counter; and to restrict payment to brokers representing themselves or state land beneficiaries. This rule will be incorporated as a new section through April, 2024 Rulemaking.

## Article 5 Leases

### A.A.C. Rule 12-5-505 Time for Filing Conflicting Applications

1. **Statutory Authority:**  
A.R.S. § 37-132(A)(1); § 37-284
2. **Objective:**  
The objective of the rule is to notify all stakeholders as to when the Department will not accept a conflicting application to use Trust land, to provide time frames for the acceptance of conflicting applications, and to define a conflicting application.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
8. **Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. There is an economic impact of the rule on the Department, as the processing of conflicting applications is both resource- and time-intensive. Nonetheless, statutes dictate that the Department accept conflicting applications in certain circumstances.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes or improvements were highlighted.

**11. Cost v. Benefit and Least Burden Analyses:**

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it informs applicants of timelines and deadlines for processing conflicting applications without creating any burdensome actions for those same applicants.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## **A.A.C. Rule 12-5-506 Procedure in Processing Conflicting Applications**

- 1. Statutory Authority:**  
A.R.S. § 37-132(A)(1); § 37-284
- 2. Objective:**  
The objective of the rule is to articulate how the Department processes and awards a lease when there are conflicting applications.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. There is an economic impact of the rule on the Department, as the processing of conflicting applications is both resource- and time-intensive. Nonetheless, statutes dictate that the Department accept conflicting applications in certain circumstances
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes or improvements were highlighted.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it

provides an efficient and fair means to process and decide conflicting applications despite the inherent burden of conflicts on applicants which cannot be entirely circumvented.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## **A.A.C. Rule 12-5-508 Application Confers No Right to Land**

- 1. Statutory Authority:**  
A.R.S. § 37-132(A)(1); 37-294
- 2. Objective:**  
The objective of this rule is to articulate the rights which are and are not conferred in the land subject to a pending new or renewal application.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear and understandable, but it is not concise because it partially reiterates what is articulated in A.A.C. R12-5-104.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no rule changes were highlighted or proposed.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule. The rule only states what is helpful for applicants to know, but there is no situation in which allowing a

lessee any equitable rights in the land would be a good idea from a trust land management perspective.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department proposed to incorporate this rule into A.A.C. R12-5-104. This rule will be amended in April, 2024.

**A.A.C. Rule 12-5-509 Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit**

**1. Statutory Authority:**

A.R.S. § 37-132; § 37-103; § 37-215; § 37-281

**2. Objective:**

The objective of this rule is to explain the requirements to finalize a STL lease or permit, including the requirements for signing, payment of rent or fees, timeframes, and deadlines. The rule describes how effective dates are determined and includes instructions on appealing an appraised rental value.

**3. Effectiveness:**

The rule is mostly effective.

**4. Consistency:**

This rule was created when the agency largely transacted and executed agreements with paper; reflected in several portions of this section. Also, the rule is inconsistent with agency operations, as receipts are not provided unless requested following execution of the lease or permit. Further, where it notes that the rental statement is sent with a copy of lease for execution by the lessee or permittee, in actuality the Department mostly sends a copy of the rental statement under separate cover prior to sending out the lease documents.

**5. Enforcement policy:**

The rule is mostly enforced, except that an application for reclassification does not serve as an effective date for a new lease.

**6. Clear, concise, and understandable:**

The rule is not easily understood as it is verbose, outdated and is not organized well. The rule is not clear because the effective date of a lease is never the date of application upon open land, but rather the date both parties have signed the lease; the date of administrative approval differs depending on the type of lease. While all of these dates fall under the “or such other subsequent date as the Commissioner may prescribe,” it is not clear what those dates are. The rule is not concise because mention of the Department seal being affixed to lease documents is redundant of A.R.S. § 37-103

**7. Written criticisms:**

The Department has not received any written criticisms of this rule in the past five years.

**8. Economic impact:**

There is no previous estimated economic, small business, or consumer impact statement of record associated with this rule available for comparison. However, the economic impact of the rule is primarily to the Department staff and resources in processing applications and managing the applications through to execution or cancellation or withdrawal.

**9. External Analysis of impact on business competitiveness:**

There have been no external analyses of this rule’s impact on business competitiveness received by ASLD.

**10. Previous 5yRR Report Course of Action:**

The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted, “ASLD only in the past year implemented an electronic application process and is currently working toward an electronic signature process for executing documents. Until those processes are implemented fully and standardized, it is not clear what ASLD would propose in the new rule regarding the treatment of insert sheets and whether those will need additional execution or be incorporated by addendum into the ASLD contracts. Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019 and will be made in light of the operation changes that are ongoing. As to whether ASLD should resolve the inconsistency in the mailing of billing statements will depend on the extent to which electronic means continue to be developed and standardized at the Department. The reference to the seal and to reclassification and appeal should be amended once the entirety of the rule is ready for amendment.”

**11. Cost v. Benefit and Least Burden Analyses:**

The Department contends that the rule’s probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule, although it needs to be amended to be transparent of processes and even more helpful to customers.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department proposes to amend this rule to eliminate inconsistent and redundant provisions; to enumerate lease commencement dates for specific types of leases; and to add numbered formatting. This rule will be amended in March, 2025.

## A.A.C. Rule 12-5-512 Assignments

1. **Statutory Authority:**  
A.R.S. § 37-132(A)(1); 37-286
2. **Objective:**  
The objective of this rule is to notify assignors of leases or permits of the prerequisites for assigning a lease or permit.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
8. **Economic impact:**  
The estimated economic impact of the rule to assignment applicants would be the following year's rent payment required in advance of an assignment application made within 30 days of the rent's due date.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted, "Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019. The interchange of "Commissioner" and "Department" do not present a substantive or immediate issue, but should other issues necessitate a rulemaking, ASLD would likely propose to change some references to "Commissioner" to "Department"." These considerations were made, but no changes

were proposed or completed based on these considerations.

**11. Cost v. Benefit and Least Burden Analyses:**

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because this burden of requiring payment prior to assignment is outweighed by the benefit that accrues to an assignee (in taking an assignment that would otherwise not be current on rent) and to the Department (in ensuring rent is paid timely).

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## **A.A.C. Rule 12-5-513 Manner of Assignments**

- 1. Statutory Authority:**  
A.R.S. § 37-132(A)(1); § 37-255(A); § 37-286(B)
- 2. Objective:**  
The objective of this rule is to notify assignors of leases or permits of the manner in which assignments are required to be done, including reference to forms, fees, map requirements, and lienholder consent.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is mostly consistent. It is inconsistent with agency operations in that the Department does not require a copy of the lease or permit to be provided at the time of application, and the Department does not allow for an assignment of an undivided interest.
- 5. Enforcement policy:**  
The rule is mostly enforced, except where it is inconsistent with agency operations, as noted above.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is no estimated economic impact of the rule to assignment applicants.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted that "Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019. The other amendments referenced in the 2013 report may also be beneficial to make." The Department made these considerations and

decided against amending this rule accordingly.

**11. Cost v. Benefit and Least Burden Analyses:**

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it provides a clear guideline pertaining to assignment, which allows the Department to assess each assignment on its merits.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department intends to amend this rule to address the inconsistencies with agency operations, specifically to remove the requirement of an applicant to provide a copy of a lease or permit at the time of application and the ability of an applicant to apply for an assignment of an undivided interest. This rule will be amended in March, 2025.

## **A.A.C. Rule 12-5-517 Rentals**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of the rule is to inform stakeholders of the nature and payment of rental amounts.
- 3. Effectiveness:**  
The rule is mostly effective.
- 4. Consistency:**  
The rule is mostly consistent, although it is inconsistent with agency operations in that grazing lease rentals are not fixed amounts (as they are based on a formula derived from an index and computed annually), and grazing and agricultural leases currently do not contain rental fee amounts in the lease documents (however, the Department is considering changing this practice).
- 5. Enforcement policy:**  
The rule is enforced as written, except as to grazing leases.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is no estimated economic impact of the rule to lessees.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department noted that "Further consideration needs to be made as to whether rights-of-way and grantees of rights-of-way should be incorporated into this and other rules within this Article. This review will occur after the rulemaking effort the Department is preparing for March 2019. Specifically, the Department has most recently litigated an issue regarding the treatments of rights-of-way by ASLD. That litigation is

still pending, and the resolution of that litigation, along with other legal considerations of the treatments of rights-of-way, may bring clarity to whether ASLD will include the reference to rights-of-way and right-of-way grantees in certain rules pertaining to Leases.” The litigation mentioned has culminated, and the change in practice associated with this litigation would not be addressed here but rather in Article 8. The other considerations were made by the Department, which then decided against amending this rule.

**11. Cost v. Benefit and Least Burden Analyses:**

The Department contends that the rule’s probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it outlines the very important requirement that all rentals be paid annually in advance, while leaving leeway for the Commissioner to alter this requirement on a case-by-case basis, which is done so mostly for the Federal government.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## A.A.C. Rule 12-5-518 Rental Notices

1. **Statutory Authority:**  
A.R.S. § 37-132
2. **Objective:**  
The objective of the rule is to explain how the Department notifies lessees that rent is due or is changing and when rent is due.
3. **Effectiveness:**  
The rule is effective.
4. **Consistency:**  
The rule is consistent.
5. **Enforcement policy:**  
The rule is enforced.
6. **Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
7. **Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
8. **Economic impact:**  
There is no estimated economic impact of the rule to the Department's customers.
9. **External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
10. **Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, the Department mentioned replacing "Commissioner" with "Department" if other updates necessitated a rulemaking; the Department determined that such non-substantive changes were not necessary.
11. **Cost v. Benefit and Least Burden Analyses:**  
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it provides information on rental notices and reasonable due dates of payments.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## **A.A.C. Rule 12-5-521 Modification or Amendment of Existing Lease or Permit**

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of the rule is to explain a limitation on the modification of an existing lease or permit term.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is no estimated economic impact of the rule to stakeholders.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, like in other rules in this article, the Department noted considering whether to add mention of rights-of-way to this rule. The Department decided against this course of action and did not amend the rule.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it outlines in a regulation that which is already contractually stipulated.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department does not intend to amend this rule at this time.

## **A.A.C. Rule 12-5-524 Sale, Mortgage or Lien on Interest of Holder of Lease or Permit**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-255
- 2. Objective:**  
The objective of the rule is to explain the responsibilities of lessees, the Department, and lienholders with respect to liens filed, foreclosure, lien balance, and notices of certain actions to parties to a lien.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is understandable, but the first paragraph is redundant of A.R.S. 37-255. Also, additional information could add clarity to the process of filing mortgages and liens with the Department.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is a potential economic impact to stakeholders, i.e. lienholders in this instance, if they do not follow the rule and the liens are not recorded and the Department defaults or cancels a lease due to non-payment. But, if the lienholders do not file notice with the Department, the Department is unable to notify them of an adverse event. This rule benefits lienholders because it allows them a process by which to have their liens recognized.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes were proposed or made.

**11. Cost v. Benefit and Least Burden Analyses:**

The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule because it affords a formal process to have liens recognized and lienholders notified in the event of a default.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department intends to amend this rule to remove the first paragraph and to add clarity to the remaining provisions regarding both the process for lienholder filings and the limitations of such filings. This rule will be amended in March, 2025.

## **A.A.C. Rule 12-5-533 Trespass on State Land**

- 1. Statutory Authority:**  
A.R.S. § 37-132; § 37-501; § 37-502
- 2. Objective:**  
The objective of the rule is to explain a trespass action and legal off-highway vehicle (“OHV”) use, as well as designate authorized uses and prescribe penalties for trespass. The rule also defines terms used.
- 3. Effectiveness:**  
The rule is effective, but misplaced within the Chapter, as it does not only apply to leases.
- 4. Consistency:**  
This rule is consistent with statute.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is concise and understandable.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
There is no estimated economic impact to stakeholders.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule’s impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes were proposed or made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The Department contends that the rule’s probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule.
- 12. Comparison with Federal Law:**  
There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

The Department proposes no action at this time.

## A.A.C. Rule 12-5-534 Closing Land to Recreational Use

- 1. Statutory Authority:**  
A.R.S. § 37-132
- 2. Objective:**  
The objective of the rule is to describe when the Commissioner may close lands to recreational use.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule is enforced.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 7. Written criticisms:**  
The Department has not received any written criticisms of this rule in the past five years.
- 8. Economic impact:**  
The objective of the rule is to describe when the Commissioner may close lands to recreational use.
- 9. External Analysis of impact on business competitiveness:**  
There have been no external analyses of this rule's impact on business competitiveness received by ASLD.
- 10. Previous 5yRR Report Course of Action:**  
The Department proposed to make general rulemaking efforts beginning in March 2019 but did not propose a timeline specifically for rules in Article 5. The Department did initiate and complete a rulemaking in 2020-21, but this did not include rules in Article 5. For this rule, no specific changes were proposed or made.
- 11. Cost v. Benefit and Least Burden Analyses:**  
The Department contends that the rule's probable benefits outweigh its probable costs, and the rule imposes the least burden and costs to persons regulated by the rule. The ability of the Commissioner to close lands in the best interests of the trust supersedes any interest in recreation.

**12. Comparison with Federal Law:**

There are no federal laws with which to compare this rule.

**13. A.R.S. § 41-1037 Compliance:**

This factor does not apply as the rules were adopted prior to July 30, 2010.

**14. Course of Action Proposed:**

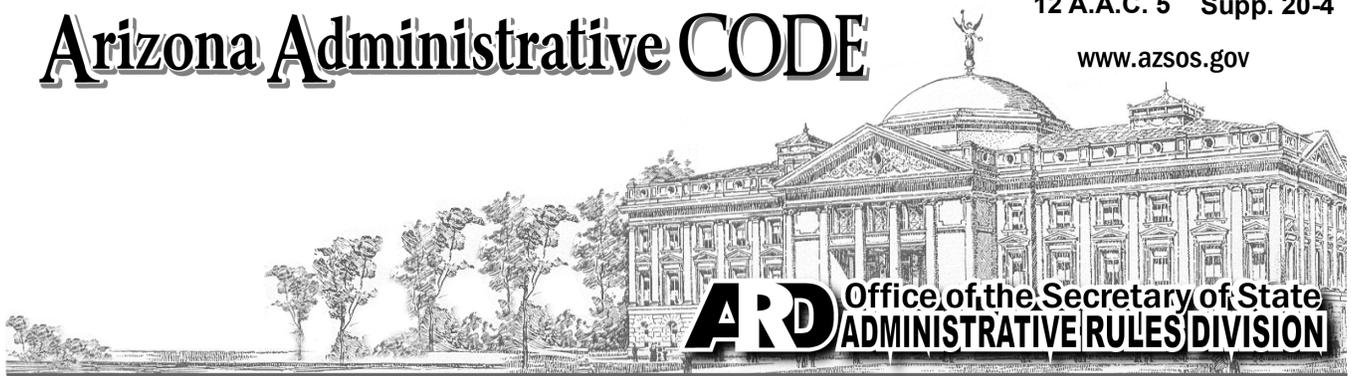
The Department intends to relocate this rule to Article 1.

## **Economic Impact Statement**

As of the end of Fiscal Year 2023, the Department held: 345 Agricultural Leases covering 157,439,161 acres of Trust Land which generated \$4,339,836 in income; 1203 Grazing Leases and Permits covering 8,333,585,519 acres which generated \$2,962,499 in income; 292 Commercial Leases covering 73,697,182 acres which generated \$32,504,784 in income; 5,422 Right-of-Way Grants and Permits covering 87,970,595 acres which generated \$11,308,524 in income; and 773 Mineral Leases covering 409,210,731 acres of Trust Land which generated \$14,317,086 in rental income.

Additionally, in Fiscal Year 2023, the Department held 43 auctions for sales of 4,760,441 acres of land and generated revenue in the amount of 374,719,009 from those land sales.

The rental payments received from the above leases are deposited into the Trust's expendable fund and distributed directly to the beneficiaries annually. The payments received from the above land sales are deposited into the Trust's permanent fund, which is invested by the Treasurer, and proceeds therefrom are distributed to beneficiaries in accordance with formulas established in the Constitution. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provide opportunities for local economies via the labor force and the communities of homes, retail, and offices that are built thereon.



## TITLE 12. NATURAL RESOURCES

### CHAPTER 5. STATE LAND DEPARTMENT

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of October 1, 2020 through December 31, 2020.

<a href="#">R12-5-101.</a>	<a href="#">Definitions .....</a>	<a href="#">5</a>	<a href="#">R12-5-106.</a>	<a href="#">Assignments; Subleases .....</a>	<a href="#">6</a>
<a href="#">R12-5-103.</a>	<a href="#">Records; Correction of Errors; Public Docket; Removal of Records .....</a>	<a href="#">5</a>	<a href="#">R12-5-107.</a>	<a href="#">Fees; Remittances .....</a>	<a href="#">6</a>
<a href="#">R12-5-104.</a>	<a href="#">Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights. ....</a>	<a href="#">6</a>	<a href="#">R12-5-201.</a>	<a href="#">Applicability .....</a>	<a href="#">7</a>
<a href="#">R12-5-105.</a>	<a href="#">Manner of Signing Documents before the Department .....</a>	<a href="#">6</a>	<a href="#">R12-5-210.</a>	<a href="#">Service; Proof of Service .....</a>	<a href="#">8</a>
			<a href="#">R12-5-211.</a>	<a href="#">Subpoenas .....</a>	<a href="#">8</a>
			<a href="#">R12-5-212.</a>	<a href="#">Procedure at Hearing .....</a>	<a href="#">8</a>
			<a href="#">R12-5-215.</a>	<a href="#">Stipulations .....</a>	<a href="#">9</a>

#### Questions about these rules? Contact:

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 Website: <https://land.az.gov/content/applicable-state-laws>

#### The release of this Chapter in Supp. 20-4 replaces Supp. 20-1, 1-52 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.*



Administrative Rules Division  
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 5. STATE LAND DEPARTMENT**

Authority: A.R.S. § 37-102 et seq.

*Editor’s Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).*

*Editor’s Note: The proposed summary action repealing R12-5-901 through R12-5-920 was remanded by the Governor’s Regulatory Review Council which revoked the interim effectiveness of the summary rules. Sections in effect before the proposed summary action have been restored (Supp. 98-3).*

*Editor’s Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 297, § 6. Exemption from A.R.S. Title 41, Chapter 6 means that the Land Department did not submit notice of this rulemaking to the Secretary of State’s Office for publication in the Arizona Administrative Register; the Governor’s Regulatory Review Council did not review these rules; the Land Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

*Title 12, Chapter 5, Articles 1 thru Article 23, were renumbered to bring the Chapter numbering into compliance with current format. For the old and new Section numbers, please refer to the introductory notes at the beginning of each Article in the table of contents or in the historical notes for the specific Sections.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Section R12-5-10, adopted effective August 2, 1994 (Supp. 94-3).*

*Article 1, consisting of Sections R12-5-101 thru R12-5-103, repealed effective August 2, 1994 (Supp. 94-3).*

*Article 1, consisting of Sections R12-5-01 thru R12-5-03, renumbered to Article 1, Sections R12-5-101 thru R12-5-103 (Supp. 93-3).*

Section	
R12-5-101.	Definitions ..... 5
R12-5-102.	Computation or Extension of Time ..... 5
R12-5-103.	Records; Correction of Errors; Public Docket; Removal of Records ..... 5
R12-5-104.	Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights ..... 6
R12-5-105.	Manner of Signing Documents before the Department ..... 6
R12-5-106.	Assignments; Subleases ..... 6
R12-5-107.	Fees; Remittances ..... 6
R12-5-108.	Predecision Administrative Hearing ..... 7
R12-5-109.	Rejection of Hearing Request ..... 7

**ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER**

*Article 2, consisting of Sections R12-5-201 thru R12-5-218, made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).*

*Article 2, consisting of Sections R12-5-201 thru R12-5-222, repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).*

*Article 2, consisting of Sections R12-5-201 thru R12-5-222, adopted effective August 2, 1994 (Supp. 94-3).*

Section	
R12-5-201.	Applicability ..... 7
R12-5-202.	Appointment of Hearing Officer ..... 7
R12-5-203.	Ex Parte Communications ..... 7
R12-5-204.	Failure to Appear ..... 7

R12-5-205.	Representation .....7
R12-5-206.	Notice of Hearing .....7
R12-5-207.	Hearing Record .....7
R12-5-208.	Consolidation .....7
R12-5-209.	Filing .....8
R12-5-210.	Service; Proof of Service .....8
R12-5-211.	Subpoenas .....8
R12-5-212.	Procedure at Hearing .....8
R12-5-213.	Evidence .....8
R12-5-214.	Judicial Notice; Technical Facts .....9
R12-5-215.	Stipulations .....9
R12-5-216.	Recommended Decision .....9
R12-5-217.	Decision .....9
R12-5-218.	Rehearing of Decision .....9
R12-5-219.	Repealed .....9
R12-5-220.	Repealed .....9
R12-5-221.	Repealed .....9
R12-5-222.	Repealed .....9

**ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS**

*Article 2, consisting of Section R12-5-50, renumbered to Article 3, Section R12-5-301 (Supp. 93-3).*

Section	
R12-5-301.	Expired .....9

**ARTICLE 4. SALES**

*Article 4, consisting of Sections R12-5-71 thru R12-5-82, renumbered to Article 4, Sections R12-5-401 thru R12-5-412 (Supp. 93-3).*

Section	
R12-5-401.	Expired .....10
R12-5-402.	Conditions for Filing Application .....10
R12-5-403.	Restrictions Subsequent to Filing Application to Purchase .....10
R12-5-404.	Responsibility of the Purchaser .....10
R12-5-405.	Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay .....10
R12-5-406.	Assignment of a Certificate of Purchase .....10
R12-5-407.	Expired .....10
R12-5-408.	Partial Patent .....10

CHAPTER 5. STATE LAND DEPARTMENT

R12-5-409. Expired ..... 11  
R12-5-410. Expired ..... 11  
R12-5-411. Expired ..... 11  
R12-5-412. Expired ..... 11  
R12-5-413. Real Estate Broker Commissions ..... 11

**ARTICLE 5. LEASES**

*Article 5, consisting of Sections R12-5-100 thru R12-5-134, renumbered to Article 5, Sections R12-5-501 thru R12-5-535 (Supp. 93-3).*

Section  
R12-5-501. Expired ..... 12  
R12-5-502. Expired ..... 12  
R12-5-503. Expired ..... 12  
R12-5-504. Expired ..... 12  
R12-5-505. Time for Filing Conflicting Applications ..... 12  
R12-5-506. Procedure in Processing Conflicting Applications ..... 12  
R12-5-507. Expired ..... 13  
R12-5-508. Application Confers No Right to Land ..... 13  
R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit ..... 13  
R12-5-510. Expired ..... 14  
R12-5-511. Expired ..... 14  
R12-5-512. Assignments ..... 14  
R12-5-513. Manner of Assignments ..... 14  
R12-5-514. Expired ..... 14  
R12-5-515. Expired ..... 14  
R12-5-516. Repealed ..... 14  
R12-5-517. Rentals ..... 14  
R12-5-518. Rental Notices ..... 14  
R12-5-519. Expired ..... 15  
R12-5-520. Expired ..... 15  
R12-5-521. Modification or Amendment of Existing Lease or Permit ..... 15  
R12-5-522. Expired ..... 15  
R12-5-523. Expired ..... 15  
R12-5-524. Sale, Mortgage or Lien on Interest of Holder of Lease or Permit ..... 15  
R12-5-525. Expired ..... 15  
R12-5-526. Expired ..... 15  
R12-5-527. Expired ..... 15  
R12-5-528. Expired ..... 15  
R12-5-529. Expired ..... 15  
R12-5-530. Expired ..... 15  
R12-5-531. Expired ..... 15  
R12-5-532. Expired ..... 16  
R12-5-533. Trespass on State Land ..... 16  
R12-5-534. Closing Land to Recreational Use ..... 16  
R12-5-535. Expired ..... 17

**ARTICLE 6. IMPROVEMENTS (RESERVED)**

**ARTICLE 7. SPECIAL LEASING PROVISIONS**

*Article 7, consisting of Sections R12-5-150 thru R12-5-155, renumbered to Article 7, Sections R12-5-701 thru R12-5-706 (Supp. 93-3).*

Section  
R12-5-701. Repealed ..... 17  
R12-5-702. Agricultural Leases ..... 17  
R12-5-703. Commercial Leases ..... 18  
R12-5-704. Expired ..... 19  
R12-5-705. Grazing Leases ..... 19  
R12-5-706. Expired ..... 21

**ARTICLE 8. RIGHTS-OF-WAY**

*Article 8, consisting of Sections R12-5-165 thru R12-5-167, renumbered to Article 8, Sections R12-5-801 thru R12-5-803 (Supp. 93-3).*

Section  
R12-5-801. Rights-of-way .....21  
R12-5-802. Reservoir, Dam, and Other Sites .....23  
R12-5-803. Expired .....24

**ARTICLE 9. EXCHANGES**

*Article 9, consisting of Sections R12-5-179 thru R12-5-199, renumbered to Article 9, Sections R12-5-901 thru R12-5-921 (Supp. 93-3).*

Section  
R12-5-901. Scope of Rules .....24  
R12-5-902. Definitions .....24  
R12-5-903. Expired .....24  
R12-5-904. Application .....25  
R12-5-905. Expired .....25  
R12-5-906. Expired .....25  
R12-5-907. Expired .....25  
R12-5-908. Expired .....25  
R12-5-909. Expired .....25  
R12-5-910. Maps and Photographs .....25  
R12-5-911. Expired .....26  
R12-5-912. Expired .....26  
R12-5-913. Expired .....26  
R12-5-914. Expired .....26  
R12-5-915. Expired .....26  
R12-5-916. Expired .....26  
R12-5-917. Expired .....26  
R12-5-918. Controversy as to Title or Leasehold Rights .....26  
R12-5-919. Expired .....27  
R12-5-920. Expired .....27  
R12-5-921. Expired .....27

**ARTICLE 10. EXPIRED**

*Article 10, consisting of Sections R12-5-1001 through R12-5-1012, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4240, effective September 6, 2002 (Supp. 02-3).*

*Article 10, consisting of Sections R12-5-200 thru R12-5-211, renumbered to Article 10, Sections R12-5-1001 thru R12-5-1022 (Supp. 93-3).*

Section  
R12-5-1001. Expired .....27  
R12-5-1002. Expired .....27  
R12-5-1003. Expired .....27  
R12-5-1004. Expired .....27  
R12-5-1005. Expired .....27  
R12-5-1006. Expired .....27  
R12-5-1007. Expired .....27  
R12-5-1008. Expired .....27  
R12-5-1009. Expired .....27  
R12-5-1010. Expired .....27  
R12-5-1011. Expired .....28  
R12-5-1012. Expired .....28

**ARTICLE 11. SPECIAL USE PERMITS**

*Article 11, consisting of Section R12-5-241, renumbered to Article 11, Section R12-5-1101 (Supp. 93-3).*

Section  
R12-5-1101. Policy; Use of Lands .....28

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 12. FEES

Article 12, consisting of Section R12-5-1201, made by exempt rulemaking at 17 A.A.R. 813, effective April 22, 2011 (Supp. 11-2).

Article 12, consisting of Section R12-5-1201, adopted summary rules filed December 6, 1996; interim effective date of August 30, 1996, now the permanent effective date (Supp. 96-4).

Article 12, consisting of Section R12-5-1201, repealed by summary action with an interim effective date of August 30, 1996; filed with the Office of the Secretary of State August 8, 1996 (Supp. 96-3).

Article 12, consisting of Section R12-5-301, renumbered to Article 12, Section R12-5-1201 (Supp. 93-3).

Section R12-5-1201. Administrative Fees ..... 29

ARTICLE 13. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 13, consisting of Sections R12-5-1301 and R12-5-1302, renumbered from Article 5, Sections R12-5-501 and R12-5-502 (Supp. 93-3).

Section R12-5-1301. Repealed ..... 30 R12-5-1302. Repealed ..... 30

ARTICLE 14. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996, now the permanent effective date (Supp. 96-3).

The heading for Article 14 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

ARTICLE 15. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

The heading for Article 15 was repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

ARTICLE 16. REPEALED

Adopted summary rules filed August 13, 1996; interim effective date of May 3, 1996 now the permanent effective date (Supp. 96-3).

Article 16, consisting of Sections R12-5-1601 thru R12-5-1612, repealed by summary action with an interim effective date of May 3, 1996; filed in the Office of the Secretary of State April 8, 1996 (Supp. 96-2).

Article 16, consisting of Sections R12-5-560 thru R12-5-564, renumbered to Article 16, Sections R12-5-1601 thru R12-5-1605; Sections R12-5-1605 thru R12-5-1612 renumbered from Article 16, Sections R12-5-570 thru R12-5-576 (Supp. 93-3).

Section R12-5-1601. Repealed .....31 R12-5-1602. Repealed .....31 R12-5-1603. Repealed .....31 R12-5-1604. Repealed .....31 R12-5-1605. Repealed .....31 R12-5-1606. Repealed .....31 R12-5-1607. Repealed .....31 R12-5-1608. Repealed .....31 R12-5-1609. Repealed .....31 R12-5-1610. Repealed .....31 R12-5-1611. Repealed .....31 R12-5-1612. Repealed .....31

ARTICLE 16.1. RENUMBERED

Article 16.1, consisting of Sections R12-5-570 thru R12-5-576, renumbered to Article 16, Sections R12-5-1606 thru R12-5-1612 (Supp. 93-3).

ARTICLE 17. REPEALED AND EXPIRED

Section R12-5-1701. Repealed .....32 R12-5-1702. Repealed .....32 R12-5-1703. Repealed .....32 R12-5-1704. Repealed .....32 R12-5-1705. Repealed .....32 R12-5-1706. Repealed .....32 R12-5-1707. Expired .....32 R12-5-1708. Repealed .....32 R12-5-1709. Repealed .....32 R12-5-1710. Repealed .....32 R12-5-1711. Repealed .....32 R12-5-1712. Repealed .....32 R12-5-1713. Repealed .....32 R12-5-1714. Repealed .....32 R12-5-1715. Repealed .....32 R12-5-1716. Repealed .....32 R12-5-1717. Repealed .....32 R12-5-1718. Repealed .....32 R12-5-1719. Repealed .....33 R12-5-1720. Repealed .....33 R12-5-1721. Repealed .....33 R12-5-1722. Repealed .....33 R12-5-1723. Repealed .....33 R12-5-1724. Repealed .....33

ARTICLE 18. MINERAL LEASES

Article 18, consisting of Sections R12-5-701 thru R12-5-707, renumbered to Article 18, Sections R12-5-1801 thru R12-5-1807 (Supp. 93-3).

Section R12-5-1801. Definitions .....33 R12-5-1802. Expired .....33 R12-5-1803. Expired .....33 R12-5-1804. Expired .....33 R12-5-1805. Lease for Mineral Claim .....33 R12-5-1806. Records and Reports .....35 R12-5-1807. Relating to Mineral Reservations .....35

ARTICLE 19. PROSPECTING PERMITS

Article 19, consisting of Sections R12-5-731 thru R12-5-735, renumbered to Article 19, Sections R12-5-1901 thru R12-5-1905 (Supp. 93-3).

Section R12-5-1901. Definitions .....35 R12-5-1902. Expired .....36

CHAPTER 5. STATE LAND DEPARTMENT

R12-5-1903. Application for Permit ..... 36  
R12-5-1904. Expired ..... 37  
R12-5-1905. Conversion of Permitted Acreage to Mineral Lease ..... 37

**ARTICLE 20. COMMON MINERAL MATERIALS AND NATURAL PRODUCTS**

Article 20, consisting of Sections R12-5-771 thru R12-5-779, renumbered to Article 20, Sections R12-5-2001 thru R12-5-2009 (Supp. 93-3).

Section  
R12-5-2001. Definitions ..... 37  
R12-5-2002. Miscellaneous Rules ..... 38  
R12-5-2003. Application for Purchase ..... 38  
R12-5-2004. Exploration Permits ..... 39  
R12-5-2005. Use of Land ..... 39  
R12-5-2006. Notice and Conduct of Competitive Sales ..... 39  
R12-5-2007. Common Mineral Materials ..... 40  
R12-5-2008. Natural Products -- Groundwater ..... 42  
R12-5-2009. All Other Natural Products ..... 42

**ARTICLE 21. OIL AND GAS LEASES**

Article 21, consisting of Sections R12-5-781 thru R12-5-802, renumbered to Article 21, Sections R12-5-2101 thru R12-5-2122 (Supp. 93-3).

Section  
R12-5-2101. Completed Oil and Gas Lease Application ..... 42  
R12-5-2102. Expired ..... 42  
R12-5-2103. Expired ..... 42  
R12-5-2104. Application for Noncompetitive Lease; Acreage Limitation ..... 43  
R12-5-2105. Expired ..... 43  
R12-5-2106. Expired ..... 43  
R12-5-2107. Expired ..... 43  
R12-5-2108. Expired ..... 43  
R12-5-2109. Expired ..... 43  
R12-5-2110. Expired ..... 43  
R12-5-2111. Expired ..... 43  
R12-5-2112. Expired ..... 43  
R12-5-2113. Expired ..... 43  
R12-5-2114. Expired ..... 43  
R12-5-2115. Competitive Lease; Award of Lease ..... 43  
R12-5-2116. Expired ..... 44  
R12-5-2117. Expired ..... 44  
R12-5-2118. Cooperative and Unit Agreements ..... 44  
R12-5-2119. Expired ..... 44  
R12-5-2120. Surrender ..... 44  
R12-5-2121. Expired ..... 44  
R12-5-2122. Monthly Statement ..... 44

**ARTICLE 22. GEOTHERMAL RESOURCES**

Article 22, consisting of Sections R12-5-850 thru R12-5-873, renumbered to Article 22, Sections R12-5-2201 thru R12-5-2224 (Supp. 93-3).

Section  
R12-5-2201. Definitions ..... 44  
R12-5-2202. Expired ..... 45  
R12-5-2203. Expired ..... 45  
R12-5-2204. Terms of Lease ..... 45  
R12-5-2205. Expired ..... 45  
R12-5-2206. Expired ..... 45  
R12-5-2207. Expired ..... 45

R12-5-2208. Expired .....46  
R12-5-2209. Surface Use .....46  
R12-5-2210. Environmental Protection and Conduct of Operations .....46  
R12-5-2211. Cooperative and Unit Agreements .....46  
R12-5-2212. Expired .....46  
R12-5-2213. Expired .....46  
R12-5-2214. Expired .....46  
R12-5-2215. Expired .....46  
R12-5-2216. Abandonment -- Other Uses .....47  
R12-5-2217. Expired .....47  
R12-5-2218. Renumbered .....47  
R12-5-2219. Renumbered .....47  
R12-5-2220. Renumbered .....47  
R12-5-2221. Renumbered .....47  
R12-5-2222. Renumbered .....47  
R12-5-2223. Renumbered .....47  
R12-5-2224. Renumbered .....47

**ARTICLE 23. BOARD OF APPEALS**

(Authority: A.R.S. § 37-213 et seq.)

Article 23, consisting of Section R12-5-901 renumbered to Article 23, Section R12-5-2301 (Supp. 93-3).

Section  
R12-5-2301. Definitions .....47  
R12-5-2302. Notice of Appeal .....47  
R12-5-2303. Notice of Hearing .....48  
R12-5-2304. Prehearing Disclosure .....48  
R12-5-2305. Continuances .....48  
R12-5-2306. Computation of Time; Additional Time After Service by Mail .....48  
R12-5-2307. Service of Documents Other than Subpoenas .....48  
R12-5-2308. Subpoenas .....48  
R12-5-2309. Motions .....49  
R12-5-2310. Hearing .....49  
R12-5-2311. Evidence .....49  
R12-5-2312. Objection to Decision by Chairperson .....49  
R12-5-2313. Ex Parte Communications .....49  
R12-5-2314. Decision of the Board .....49  
R12-5-2315. Rehearing or Review of Decision .....49

**ARTICLE 24. EXPIRED**

Article 24, consisting of R12-5-2401 through R12-5-2405, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 2942, effective May 31, 2004 (Supp. 04-2).

Section  
R12-5-2401. Expired .....50  
R12-5-2402. Expired .....50  
R12-5-2403. Expired .....50  
R12-5-2404. Expired .....50  
R12-5-2405. Expired .....50

**ARTICLE 25. CLASSIFYING TRUST LANDS AS SUITABLE FOR CONSERVATION PURPOSES**

Article 25, consisting of Sections R12-5-2501 thru R12-5-2503, adopted effective March 5, 1998 (Supp. 98-1).

Section  
R12-5-2501. Petition .....50  
R12-5-2502. Reclassification .....51  
R12-5-2503. Bond .....52

## CHAPTER 5. STATE LAND DEPARTMENT

## ARTICLE 1. GENERAL PROVISIONS

**R12-5-101. Definitions**

Unless the context otherwise requires, a word, term, or phrase that is defined in A.R.S. Title 27, Chapter 2 or Title 37 has the same meaning when used in this Chapter. Except as otherwise stated, the following definitions of words, terms, and phrases apply to this Chapter.

1. "Best interest of the state" means best interest of the Trust.
2. "Common mineral materials and products" means cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock, and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, or fill for general construction and similar purposes.
3. "Contiguous" means two parcels of land that have at least part of one side in common or have a corner touching.
4. "Grantee" means the holder of a right-of-way and includes the holder of an approved assignment of a right-of-way other than an assignment for the purpose of granting a security interest.
5. "Lease" means any validly executed document that entitles the lessee to surface or subsurface use or occupancy of State land excluding an assignment for the purposes of granting a security interest.
6. "Lessee" means the holder of a lease excluding an assignment for the purpose of granting a security interest.
7. "Lessor" means the Department.
8. "Natural product" means any material or substance occurring in its native state that when extracted, is subject to depletion and includes water, vegetation, common mineral products and materials that are severable from the land, except geothermal resources and those substances subject to the mineral exploration permit and mineral leasing laws of this State.
9. "Non-conflicted application" means an application for the use of State land that is not conflicted by one or more applications for the same use of the land filed within the time-frame for a conflicting application to be filed under A.R.S. § 37-284.
10. "Party" means a person or agency named or admitted as a party in a proceeding or someone seeking to intervene and may include the Department.
11. "Permit" means any Department-issued document that entitles the permittee to surface or subsurface use or occupancy of State land, excluding an assignment for the purposes of granting a security interest.
12. "Permittee" means the holder of a permit excluding an assignment for the purpose of granting a security interest.
13. "Person" has the same meaning as prescribed in A.R.S. § 1-215.
14. "Public Records" means the area designated by the Commissioner within the offices of the Department for the submission of all documents to be filed with the Department.
15. "Right-of-way" means a right of use and passage over, through, or beneath the surface of State land, for an express purpose or to travel to a specific location.
16. "Special Land Use Permit" means a Department-issued document that entitles a permittee to occupy or use State lands for an express purpose, not otherwise expressly provided for by law, and for a specific duration.
17. "Sublease" means an agreement approved by the Commissioner, except when it is not expressly required in a Lease to be preapproved, between a lessee and a third

person to lease the property where the lessee retains an interest in the lease.

**Historical Note**

Original rule, Ch. I (Supp. 76-4). Section R12-5-101 renumbered from Section R12-5-01 (Supp. 93-3). Section repealed, new Section adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-102. Computation or Extension of Time**

- A. Computation of time. In computing any time period prescribed or allowed under this Chapter, except a time period prescribed under Article 2 of this Chapter, the Department shall exclude the day from which the designated time period begins to run. The computation of time includes intermediate Saturdays, Sundays, and legal holidays. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the time period is 10 days or less, the Department shall exclude Saturdays, Sundays, and legal holidays.
- B. Extension of time. At the Commissioner's initiative, or upon request, the Commissioner may extend any time period to perform or complete any ordered or required action. The Commissioner shall extend a time period only if the person making a request shows good cause for the extension.

**Historical Note**

Original rule, Subchapter A, Ch. II (Supp. 76-4). Section R12-5-102 renumbered from Section R12-5-02 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-103. Records; Correction of Errors; Public Docket; Removal of Records**

- A. Record. The Department shall stamp every document and other object physically filed in the Department to record date and time of receipt. When a document is electronically filed, the electronic record shall serve to record the date and time of receipt. A filed document or other object constitutes a part of the record and is available for public inspection, except as prohibited by statute, at any time during the office hours of the Department.
- B. Correction of errors. On the Commissioner's own initiative or upon request by a party, the Commissioner may correct a manifest typographical or clerical error in a decision, order, instrument, or other record of the Department resulting from oversight or omission. The Commissioner shall provide notice of any correction in the form the Commissioner deems appropriate.
- C. Public docket. A person may obtain a copy of a public docket, maintained by the Department pursuant to A.R.S. § 37-102(F), listing the matters pending before the Department by requesting a copy in person at the Phoenix Office or by mail or e-mail. The Department shall charge to cover the costs of copying a public docket in accordance with A.R.S. § 39-121.01.
- D. Removal of papers. A person shall not remove an instrument, document, or other paper or object on file with the Department from the Department, except as authorized by the Commissioner, the Commissioner's duly appointed deputy or employee or by order of a court of competent jurisdiction.

**Historical Note**

Adopted effective May 13, 1977 (Supp. 77-3). Correction, omission from subsection (A) in Supp. 77-3 (Supp.

## CHAPTER 5. STATE LAND DEPARTMENT

77-6). Section R12-5-103 renumbered from Section R12-5-03 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-104. Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights**

- A.** Forms. A person shall submit an application, report, or other document required by statute or this Chapter to be filed with the Department upon a form prescribed by the Department. The Department shall accept for filing other instruments, such as corporation papers, liens or mortgages, powers of attorney, affidavits of heirship, death certificates, and other legal documents.
- B.** Required information as to legal status. A corporation, limited partnership, association, or other entity authorized to conduct business in this state that is applying to purchase, lease, or sublease State lands or any interest in State lands shall state in its application that it is authorized to conduct business in this state.
- C.** Submission of application, report, document, or other instrument. A person shall submit an application, report, document, or other instrument electronically or otherwise to the Department along with payment of any required fee.
- D.** Application confers no rights. A pending application to lease, purchase, or use State land confers no rights to the applicant.
1. The Department may allow a lessee who files a conflicted or non-conflicted application for renewal of an existing lease to remain in possession or continue to occupy or use the land in accordance with the provisions of the lease sought to be renewed until the application to renew is granted or denied if:
    - a. The rent is current;
    - b. The lessee is in possession, or otherwise occupies or uses the land; and
    - c. The lessee is in good standing under the lease sought to be renewed.
  2. A lessee who remains in possession or continues to occupy or use the land in accordance with the provisions of the lease with the Department's permission under this Section shall pay any rent or other monies owed, such as penalty and interest on delinquent rent or irrigation district assessments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-105. Manner of Signing Documents before the Department**

- A.** A person shall sign a document requiring signature in the same manner as the person's name appears of record with the Department or in the manner in which the person is requesting the Department issue a new document.
- B.** If a document is executed for the benefit of:
1. One individual, the document shall be signed by that individual or by an authorized representative of the individual;
  2. More than one individual, the document shall be signed by each individual or by the individual's authorized representative; or
  3. A business entity or an association of any kind, the document shall be signed by an authorized representative of the entity or association.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-106. Assignments; Subleases**

- A.** A person shall not assign or sublease any right, entitlement, or interest, in whole or in part, in State land, or possession, occupancy, or right to remove anything, in whole or in part, from State land unless:
1. The person has made application for the assignment or sublease; and
  2. The Commissioner has approved the assignment or sublease in writing, unless a lease expressly permits otherwise.
- B.** In addition to the conditions and provisions of the lease sought to be subleased, any approved sublease is subject to further conditions and provisions as the Commissioner may determine are necessary to further the best interest of the Trust, including but not limited to provisions relating to ownership of improvements on the lease and disposition of proceeds relating to the improvements.
- C.** The Department may cancel a lease if a sublessee violates a provision of a lease.
- D.** The Department shall hold the lessee and sublessee jointly and severally liable for damages arising out of a violation of a provision of a lease.
- E.** The Department shall not approve a sublease of a sublease for State land.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-107. Fees; Remittances**

- A.** A person shall pay fees and other remittances, except for filing fees outlined in R12-5-1201, to the Department by cash, money order, bank draft, or check payable to the "Arizona State Land Department." A person shall pay filing fees pursuant to R12-5-1201 to the Department by cash, credit card, money order, bank draft, or check payable to the "Arizona State Land Department."
- B.** A person shall pay all billing statements issued by the Department, whether relating to rent, royalty, or other monies owed to the Department, within 30 days of the date of issuance, unless otherwise specified on the billing statement. If payment is not postmarked or is not electronically received on or before the close of business on the due date, the Department shall assess penalty and interest as required by law.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-108. Predecision Administrative Hearing**

The Commissioner may initiate a predecision administrative hearing to investigate an issue, gather information, or review facts to assist the Commissioner in the decision-making process before issuing a decision on any matter pending before the Department.

## CHAPTER 5. STATE LAND DEPARTMENT

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-109. Rejection of Hearing Request**

The Commissioner shall reject any request for a hearing under A.R.S. Title 41, Chapter 6 that the Commissioner determines not to be subject to A.R.S. Title 41, Chapter 6.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER**

**R12-5-201. Applicability**

This Article applies to a hearing resulting from a protest of an auction pursuant to A.R.S. § 37-301, hereinafter referred to in this Article as “a hearing.”

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-202. Appointment of Hearing Officer**

- A. The Commissioner may serve as the hearing officer or may appoint a hearing officer to conduct a hearing under A.R.S. § 37-301.
- B. If a hearing officer, for any reason, cannot continue to preside at the hearing, the Commissioner shall appoint a new hearing officer.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-203. Ex Parte Communications**

A party shall not communicate on matters substantive to the hearing, either directly or indirectly, with the hearing officer, the Commissioner, the Deputy Commissioner, or any member of the Commissioner’s staff involved in the decision-making process unless:

1. All parties are present; or
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice under R12-5-210.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-204. Failure to Appear**

If a party fails to appear at a hearing, the hearing officer may vacate the hearing or allow the appearing party to present evidence.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-205. Representation**

A party may participate in a hearing in person or through an attorney, except that a corporation shall be represented by an attorney. A partnership may appear through any partner, an association through a key administrator or other executive officer, and an agency or a

political subdivision or unit of a political subdivision may appear through an employee.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-206. Notice of Hearing**

- A. Upon determination by the Commissioner that a hearing will be held, the Department shall issue a notice of hearing that contains:
  1. A caption referencing the Department’s case number, a brief description of the matter to be heard, the name or names of the parties and their status, or both;
  2. The date, time, and place of the hearing;
  3. A reference to the particular sections of the statutes and rules under which the hearing is to be held;
  4. A short, plain statement of the matter to be heard;
  5. The name, mailing address, and telephone number of the hearing officer;
  6. The names and mailing addresses of persons to whom notice is being given; and
  7. Any other information required by statute or rule.
- B. An applicant for sale or long-term lease of State Trust land is a party to an administrative hearing conducted under A.R.S. § 37-301.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-207. Hearing Record**

- A. After the notice of hearing is issued, the hearing file shall be available for inspection at the Department’s Public Records Office, Phoenix, during regular business hours.
- B. Hearings shall be electronically recorded or stenographically reported by the Department. The hearing officer shall designate the official record of the proceedings. If a hearing is recorded electronically, the tapes shall be available for review in the Department’s Public Records Office, Phoenix, during regular business hours. The cost for copies of tapes shall be paid by the person requesting them. The Department shall maintain the original transcript of the official record of the proceeding, if available, as part of the hearing file.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-208. Consolidation**

When multiple protests of the same auction are pending before the Department, the Department may consolidate the protests into a single hearing.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-209. Filing**

All papers filed with the Department in a hearing shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches, include the name and address of the party or individual filing the paper, be properly captioned and designate the title and case number, state the name and address of each party served with a copy, and be signed by the party or, if represented, by the party’s attorney. The signature certifies that the signer has read the paper, that to the

## CHAPTER 5. STATE LAND DEPARTMENT

best of the signer's knowledge, information, and belief there is good ground to support its contents, and that it is not filed for delay.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-210. Service; Proof of Service**

- A.** After a notice of hearing is issued, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the hearing, or the party's counsel if the party is represented, at the same time the paper is filed. Service is complete at the time of personal service or on the date mailed if served by certified or regular mail addressed to the last address of record in the hearing file.
- B.** The following is evidence that service is complete:
1. If personally served, an affidavit of personal service, sworn to by the person serving the paper and stating that the server personally served the paper on the person to whom it was directed, where service was made, and the date of service;
  2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
  3. If served by regular mail, either a statement subscribed on the paper filed with the Department, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- C.** The Department shall serve the notice of hearing decision and final order, either by personal service or by certified mail. The Department or a party shall serve all other papers by regular or certified mail or by personal service.
- D.** When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Department, or, if no Assistant Attorney General is named, on the Attorney General, State Government Division, Chief Counsel, Natural Resources Section.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-211. Subpoenas**

- A.** The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or to produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.
- B.** A request for a hearing subpoena shall be in writing, filed with the hearing officer, and served on each party at least seven days before the date set for hearing and state:
1. The caption of the hearing, the case number, and the date, time, and place where the witness is expected to appear and testify;
  2. The name and address of the witness or custodian of records subpoenaed; and
  3. The documents subpoenaed, if any.
- C.** The hearing officer shall grant the request if the hearing officer determines there is reasonable need, such as relevant facts expected to be established by the person or document subpoenaed, and the production of documents is not unduly repetitious or burdensome.

- D.** A party or person subpoenaed may file an objection to the subpoena with the hearing officer. The party or person shall file the objection within five days after service of the subpoena, or on the first day of the hearing, whichever is earlier.
- E.** The party requesting the subpoena shall prepare the subpoena and cause it to be served upon the person to whom the subpoena is directed. A person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the hearing officer a certified statement of the date and manner of service and the name of the person served.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-212. Procedure at Hearing**

- A.** The hearing officer shall preside over the hearing and shall give all parties the opportunity to testify, respond, present evidence, argument, and witnesses, conduct examination and cross-examination, and submit rebuttal evidence. The hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. The hearing officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite questioning to the extent consistent with the disclosure of all relevant testimony and information.
- B.** If all parties agree and if each party has an opportunity to participate in the entire proceeding, the hearing officer may conduct all or part of the hearing by telephone or other electronic means.
- C.** A hearing is open to the public, except if the hearing is required to be closed according to an express provision of law. The Department shall make a hearing conducted by telephone or other electronic means available to the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.
- D.** The hearing officer may exclude from participation or observation a person whose conduct at the hearing is disruptive or shows contempt for the proceedings.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-213. Evidence**

- A.** All witnesses shall testify under oath or affirmation. All parties shall have the right to present oral or documentary evidence and to conduct cross-examination as required for a full and true disclosure of the facts. The hearing officer shall receive evidence, rule upon offers of proof, and exclude evidence the hearing officer determines to be irrelevant, immaterial, or unduly repetitious. The hearing officer shall admit the kind of evidence on which reasonably prudent people would rely, even if the evidence would be inadmissible in a civil court trial.
- B.** Unless otherwise ordered by the hearing officer, a party shall not present documentary evidence larger than 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and shall furnish a copy of each exhibit to each party present. If evidence offered by a

## CHAPTER 5. STATE LAND DEPARTMENT

party appears in a larger work that contains other information, the party shall plainly designate the portion offered. If the evidence offered is in a volume of a length that would unnecessarily encumber the record, the hearing officer shall not receive the book, paper, or document in evidence but the evidence may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered is subject to appropriate and timely objection.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-214. Judicial Notice; Technical Facts**

When conducting a hearing, the hearing officer may take notice of judicially cognizable facts as permitted under the Arizona Rules of Evidence. The Commissioner or the hearing officer may take judicial notice of generally recognized technical or scientific facts within the Commissioner's, the hearing officer's, or the Department's specialized knowledge. The Commissioner or the hearing officer may use experience, technical competence, and specialized knowledge in the evaluation of any information and evidence submitted in a hearing.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-215. Stipulations**

Parties to a hearing may agree, in writing, to any issue addressed in the hearing, including matters of procedure, subject to the approval of the hearing officer. If approved by the hearing officer, an agreement on matters of procedure or substance is binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts. No agreement by the parties on substantive matters is binding upon the Department unless incorporated into the decision of the Commissioner.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4). Amended by final rulemaking at 26 A.A.R. 3036, effective January 5, 2021 (Supp. 20-4).

**R12-5-216. Recommended Decision**

If a hearing officer other than the Commissioner presides at a hearing, the hearing officer shall prepare a recommended decision for the Commissioner within 10 days of the close of the hearing, or no later than eight days before the auction date, whichever is earlier.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-217. Decision**

The Commissioner's decision shall include separate findings of fact and conclusions of law. The Commissioner's decision shall also include policy reasons for the decision if it is an exercise of the Commissioner's discretion, including the reason for the remedy ordered.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-218. Rehearing of Decision**

A. As specified A.R.S. § 37-301(C), a request for rehearing shall be filed with the State Land Commissioner, State Land Department, Phoenix, and shall specify the particular grounds for rehearing. A rehearing of the decision may be granted for any of the following reasons materially affecting the requesting party's rights:

1. Irregularity in the proceedings or any order or abuse of discretion that deprived the requesting party of a fair hearing;
2. Misconduct of the Commissioner, Departmental employees, the hearing officer, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient remedies;
6. Error in the admission or rejection of evidence or other errors of law; or
7. The decision is not justified by the evidence or is contrary to law.

B. On review of the request for rehearing, the Commissioner may affirm the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-219. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-220. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-221. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-222. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS****R12-5-301. Expired**

## CHAPTER 5. STATE LAND DEPARTMENT

**Historical Note**

Original rule, Subchapter D, Ch. II (Supp. 76-4). Section R12-5-301 renumbered from Section R12-5-50 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**ARTICLE 4. SALES****R12-5-401. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-401 renumbered from Section R12-5-71 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-402. Conditions for Filing Application**

- A. An application shall cover only one section or subdivision thereof.
- B. When the application is made by one claiming a right to reimbursement for improvements placed upon state land, the applicant shall attach a list of the improvements placed or made upon said lands.
- C. The applicant to purchase state land shall deposit an amount of money sufficient to pay the expense incidental to bringing a parcel of land to sale when the Department determines that the benefit to be derived from the sale is less than the expense involved.
- D. An application to purchase state land cannot be withdrawn without the approval of the Commissioner.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-402 renumbered from Section R12-5-72 (Supp. 93-3).

**R12-5-403. Restrictions Subsequent to Filing Application to Purchase**

No lessee may file any transfer, assignment, mortgage or application affecting the lands covered in their application to purchase.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-403 renumbered from Section R12-5-73 (Supp. 93-3).

**R12-5-404. Responsibility of the Purchaser**

- A. The recording of a Certificate of Purchase and/or Patent with the County Recorder of the County in which the lands are located.
- B. Payment of the taxes, water assessments and other charges which may be assessed against the land.
- C. Protection of the lands against any loss or waste to or upon the lands.
- D. To maintain any right to the use of water appurtenant to the land against forfeiture or abandonment of the right.
- E. File a report with the State Land Commissioner of the sale of any sand, gravel, stone or other natural product from the land.
- F. Acquire the consent of the Department prior to granting a right-of-way on the land.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-404 renumbered from Section R12-5-74 (Supp. 93-3).

**R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay**

- A. A holder of a Certificate of Purchase shall include, with the annual payments of principal and interest for the certificate of

purchase, proof that taxes and any other assessments have been paid for the current year.

- B. An extension of time to pay an annual installment of principal or interest shall be made in accordance with R12-5-102(B).

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-405 renumbered from Section R12-5-75 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 4197, effective January 5, 2008 (Supp. 07-4).

**R12-5-406. Assignment of a Certificate of Purchase**

- A. The transfer of a Certificate of Purchase will be made only upon the filing of an "Application to Assign and Assumption of Certificate of Purchase" form which will be supplied by this Department.
- B. An application to assign and assumption of a Certificate of Purchase will not be approved:
  1. When the annual payments are found to be in arrears.
  2. When taxes are found to be in arrears.
  3. When the release or satisfaction of a lien or mortgage filed with the Department has not been submitted with said application.
  4. When affidavit of citizenship in the United States and/or statement of authorization to do business in the state of Arizona has not been submitted with said application.
- C. No portion, less than all of the lands covered in a Certificate of Purchase, can be assigned.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-406 renumbered from Section R12-5-76 (Supp. 93-3).

**R12-5-407. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-407 renumbered from Section R12-5-77 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-408. Partial Patent**

- A. As used in this Section, a "partial patent" means a patent for less than the entire tract covered under a Certificate of Purchase. The holder of a Certificate of Purchase applying to the Department for a partial patent of lands under a Certificate of Purchase, shall provide to the Department the following at the time of application:
  1. Appropriate filing fee as required under A.R.S. § 37-108(A)(9)(c).
  2. A copy of a receipt from the County Treasurer for the county where the land under application for partial patent is located, showing that the taxes are currently paid on both the parcel of land under application for partial patent and any lands remaining under the Certificate of Purchase.
  3. A written land legal description and a survey plat (drawing size 17" x 26") issued by a land surveyor, registered in Arizona, of the lands covered by the Certificate of Purchase, including the lands described in the application for partial patent. The written land legal description and the survey plat shall be provided in paper format and a digital format specified in the application.
  4. A proposed development plan showing the lands, including lands under the proposed partial patent, covered by the Certificate of Purchase and information as to how the proposed development plan will be implemented in compliance with City or County ordinances and regulations.

## CHAPTER 5. STATE LAND DEPARTMENT

The development plan shall contain proposed densities, unit breakdown, and approved or proposed zoning district classifications.

- B.** If the Commissioner deems it necessary, the Department shall require a tentative plat with a proposed development overlay, including the topography, infrastructure improvements, and existing structures of the lands under the Certificate of Purchase, including the lands under application for partial patent, as well as of those lands contiguous to all boundaries of the lands covered by the Certificate of Purchase.
- C.** The Department shall not accept an application that relates to a Certificate of Purchase for which the purchaser has failed to pay applicable fees or is in default as to payment of principal or interest, or in arrears on taxes.
- D.** Before issuing a partial patent, the Department shall determine that the remaining lands are of greater value than the unpaid balance of the Certificate of Purchase and that the remaining lands have development potential independent of the acreage that is sought to be patented. If the Commissioner determines that it is necessary to establish the value of the remaining lands, or the parcel sought to be patented, or both, the applicant shall provide, at the applicant's expense, the following:
1. An appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as referenced in A.A.C. R4-46-401 or an economic analysis by the Department's appraisal staff or by a state-approved appraiser of the parcel sought to be patented or the lands remaining under the Certificate of Purchase, or both.
  2. An infrastructure assessment detailing service, capacity, and cost information for the remaining lands; and
  3. Any additional information the Department considers necessary to determine the adequacy of the value of the remaining lands as security for the balance of all remaining payments required to be made under the Certificate of Purchase after the partial patent is issued.
- E.** If the application or any of its attachments does not contain the information required by this Section, the Commissioner shall immediately provide written notice of the deficiency to the applicant. The Department shall allow 20 days, from the date on the written notice from the Commissioner, for the applicant to cure the deficiency. If additional time is needed to cure the deficiency, the applicant may request an extension of the time pursuant to R12-5-102. If the deficiency is not remedied in the time allowed, the application shall be deemed withdrawn.

**Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-408 renumbered from Section R12-5-78 (Supp. 93-3). Amended by final rulemaking at 14 A.A.R. 4524, effective January 31, 2009 (Supp. 08-4).

**R12-5-409. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-409 renumbered from Section R12-5-79 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-410. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-410 renumbered from Section R12-5-80 (Supp.

93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-411. Expired****Historical Note**

Original rule, Subchapter C, Ch. II (Supp. 76-4). Section R12-5-411 renumbered from Section R12-5-81 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

**R12-5-412. Expired****Historical Note**

Adopted effective March 6, 1979 (Supp. 79-2). Section R12-5-412 renumbered from Section R12-5-82 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5476, effective October 31, 2003 (Supp. 03-4).

*Editor's Note: The following Section was amended by emergency rulemaking effective December 20, 2002 to November 18, 2003. The State Land Department filed a rulemaking package for the permanent Section October 8, 2003, without requesting an immediate effective date. The effective date of the permanent rule would have been December 7, 2003, creating a three-week "window" during which neither the emergency rule nor the amended permanent rule would have been in effect. To avoid this, the Department refiled the permanent rule with the Governor's Regulatory Review Council, this time requesting an immediate effective date. G.R.R.C. approved the refiled rule and filed it with the Secretary of State November 4, 2003, thereby resolving the issue (Supp. 03-4).*

**R12-5-413. Real Estate Broker Commissions**

- A.** The Commissioner may offer a commission for the sale or long-term commercial lease of state land at public auction. In determining whether to offer a commission for the sale or long-term commercial lease of state land at public auction, the Commissioner shall consider the following factors:
1. The appraised value of the parcel being offered,
  2. The location and size of the parcel being offered,
  3. The terms of the sale or lease,
  4. The marketability of the land, and
  5. The best interest of the State Trust.
- B.** If a commission is offered for the sale or long-term commercial lease of state land at public auction, the Department shall pay the commission from the fees collected under A.R.S. § 37-108(A)(10)(a).
- C.** The Department shall publish the decision of the Commissioner to pay or not pay a commission for the sale or long-term commercial lease of state land and the amount and terms of the commission offered, if any, in the public notice of the auction.
- D.** Upon determination by the Commissioner that a commission will be offered on a sale or long-term commercial lease, a person holding an active real estate broker license in this state is eligible to receive the commission, from the Department, by registering with the Department the successful purchaser or lessee at public auction. A broker shall register himself or herself and the potential purchaser or lessee with the Department no later than three business days before the auction. The broker shall register in writing and include the following:
1. Name and address of the brokerage;
  2. Name and real estate license number of the broker and any real estate salesperson acting as an agent for the broker at the public auction;
  3. Name and address of the potential purchaser or lessee;
  4. Auction number, location, and parcel number of the land to be auctioned for sale or lease; and

## CHAPTER 5. STATE LAND DEPARTMENT

5. Signature of the broker or salesperson and the potential purchaser or lessee verifying that the broker or salesperson represents the potential purchaser or lessee and that together they have inspected the land to be auctioned for sale or lease.
- E. A broker shall submit registration meeting the requirements of subsection (D) by mail or hand-delivery to the Department's public counter, Phoenix, Arizona 85007. The Department deems registration received on the date postmarked if mailed or time-stamped if hand-delivered. A broker shall not register the following:
1. A potential purchaser or lessee who is registered with another broker for the same auction, or
  2. A governmental agency.
- F. The Department shall pay the commission to the broker representing the successful purchaser or long-term commercial lessee at the time of delivery of the certificate of purchase or patent, or lease, or after final disposition of any protests or appeals resulting from the auction, whichever occurs later.
- G. The Department shall not pay a commission to a broker if the Commissioner determines that the broker has violated this Section.
- H. For the purpose of this Section, the following definitions apply:
1. "Long-term commercial lease" means a lease granted on state land for commercial purposes to the highest and best bidder at public auction for a term in excess of 10 years, but not more than 99 years.
  2. "Commercial lease" means an agreement by which an owner of real property (lessor) gives the right of possession to another (lessee) for a specified period of time (term) and for a specified consideration (rent).

**Historical Note**

Adopted effective February 9, 1996 (Supp. 96-1). Section R12-5-413 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 5151, effective December 20, 2002 for a period of 180 days (Supp. 02-4). Emergency rulemaking renewed under A.R.S. § 41-1026(D) at 9 A.A.R. 1963, effective May 23, 2003 for a period of 180 days (Supp. 03-2). Emergency rule repealed under A.R.S. § 41-1026(E); replaced by permanent Section R12-5-413 amended by final rulemaking at 9 A.A.R. 5038, effective November 4, 2003. For more information, see the Editor's Note preceding this Section (Supp. 03-4).

**ARTICLE 5. LEASES****R12-5-501. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-501 renumbered from Section R12-5-100 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-502. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-502 renumbered from Section R12-5-101 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-503. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-503 renumbered from Section R12-5-102

(Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-504. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-504 renumbered from Section R12-5-103 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-505. Time for Filing Conflicting Applications**

- A. Unleased land. If an application is filed on unleased land, and a proposed lease, permit, or right-of-way document is offered to an applicant for review and signature, the Department shall not accept another application for the same purpose.
- B. Land under lease for the same purpose. The Department shall not accept a conflicting application for a lease unless the application is filed within the time prescribed by A.R.S. § 37-284.
- C. Land under permit for the same purpose where the use is exclusive. An applicant shall file a conflicting application for a permit on land for the same purpose within 60 days before expiration of the existing permit.
- D. For the purpose of this Article, conflicting applications are defined as two or more applications to lease State Trust surface land for the same purpose or two or more permit applications to use State Trust surface land for the same purpose.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-505 renumbered from Section R12-5-104 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

**R12-5-506. Procedure in Processing Conflicting Applications**

- A. If two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall send a Notice of Conflicting Applications to each applicant requiring each applicant to submit to the Department a statement of equities containing the basis of the applicant's claim to the lease or permit and to serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. If an applicant fails to submit a statement of equities, the Department may examine evidence or records, or review testimony from a hearing conducted under subsection (E)(2) and make a decision regarding the conflicting applications. The Department shall make its decision regarding an application filed for lease or permit under this Section in the best interest of the Trust.
- B. An applicant shall have the statement of equities verified under oath before an officer authorized under the laws of this state to administer oaths, or sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct, and complete. The statement of equities shall include information related to the factors considered under subsection (D).
- C. An applicant, within 10 days from the date of receipt of the statement of equities of another applicant, may file with the Department and if filed, shall serve upon other applicants, a response to the other applicant's statement of equities.
- D. In conducting an investigation and review, the Department shall consider the following factors:
1. An offer to pay more than appraised rental as an equity, if the Department determines not to go to bid on the conflict;

## CHAPTER 5. STATE LAND DEPARTMENT

2. Whether the applicant's proposed land use or land management plan is beneficial to the Trust;
  3. The applicant's access to or control of facilities or resources necessary to accomplish the proposed use;
  4. The applicant's willingness to reimburse the owner of reimbursable non-removable improvements;
  5. The applicant's previous management of land leases, land management plans, or any history of land or resource management activities on private or leased lands;
  6. The applicant's experience associated with the proposed use of land;
  7. Impact of the proposed use on future utility and income potential of the land;
  8. Impact to surrounding state land;
  9. Recommendations of the Department's staff; and
  10. Any other considerations in the best interest of the Trust.
- E.** After investigation and review of the statements of equities, the Department may:
1. Request additional information from an applicant;
  2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
  3. Award the lease or permit to an applicant;
  4. Reject all applications; or
  5. Proceed to bid according to A.R.S. § 37-284.
- F.** The bid process is as follows:
1. If the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding that states the time and place bids will be accepted including the minimum rental that will be accepted.
  2. The Notice shall specify the existence of a preferred right, if any. The Department shall include, with the Notice, a copy of the form of lease or permit that may be offered to the successful bidder. A bidder shall submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. A bid shall be made on forms provided by the Department. The Department shall accept a bid form only with the original signature of the bidder. A bidder may either mail or deliver the bid in person to the Department.
  3. The Department shall not accept a bid from anyone other than an applicant named in the Notice of Call for Bidding.
  4. Unless subsection (F)(5) applies, the Department shall accept only one bid from each applicant. Once the bid is submitted, the Department shall not accept a second or substitute bid or any change to the original bid.
  5. If the bids of two or more applicants are the same, are also the highest bids offered, and there is no preferred right, the Department shall repeat the bid procedure under subsections (F)(1) and (2) with the following exceptions, until a single highest bid is submitted:
    - a. In a call for new bids, the Department shall establish a new minimum rental that equals the highest amount offered in the previous bidding.
    - b. The Department shall accept new bids only from the applicants who submitted the highest matching bids.
  6. The Department shall mail a Notice of Bid Results to all bidders. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the Notice of Bid Results, offer a bid matching the highest bid, in writing, on forms provided by the Department.
- G.** Nothing in this Section limits or diminishes the jurisdiction of the Department. This Section does not apply to an application for an oil or gas lease.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-506 renumbered from Section R12-5-105 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

**R12-5-507. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-507 renumbered from Section R12-5-106 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-508. Application Confers No Right to Land**

An application or permit for state land confers no right of occupancy, possession or use of said land until a lease or permit is issued thereunder or permission is granted in writing by the Commissioner. Provided, however, a prior lessee or permittee may occupy and use said land pending action on his application for renewal. In the event that the prior lessee or permittee should not be awarded a renewed lease or permit, the Commissioner may assess and collect from said lessee or permittee the reasonable value of the use of said land pending action upon the application to renew said lease or permit.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-508 renumbered from Section R12-5-107 (Supp. 93-3).

**R12-5-509. Execution of Leases or Permits; Covenants; Effective Date and Completion of Lease or Permit**

All leases and permits shall be signed by the lessee or permittee as provided by these rules and regulations and by the Commissioner or his Deputy, with the seal of the Department affixed thereto. All leases and permits shall contain such provisions, covenants, conditions and restrictions as may be prescribed by the Commissioner, hereinafter more particularly set forth under each type of lease. The effective date of the lease will be the date of application upon open land, or such other subsequent date as the Commissioner may prescribe. Upon lands previously leased, the date following the expiration date of the lease shall be the effective date; provided, that where the lands under lease have been reclassified, the effective date of the lease shall bear the date of such reclassification, if no appeal from reclassification is taken or if the Commissioner's decision is upheld if so appealed, or such other subsequent date as the Commissioner may prescribe.

Upon approval of the application to lease or permit and an appraisal or fixing of the rental value thereof, a lease or permit in duplicate will be mailed to the lessee or permittee, which lease or permit shall be signed in duplicate by the lessee or the permittee in the manner prescribed by these rules and regulations. Insert sheets which, when required, described the land being leased or for which permit is issued are a part of the lease or permit and shall be signed in the same manner as the lease or permit. A statement of the rental due and the permit or lease issuance fee will accompany the transmittal of the lease or permit. Upon the lease and permit and insert sheets, when required, being signed, they are to be returned to the Commissioner with the rental payment and lease or permit issuance fee in accordance with the statement rendered. When the lease or permit and insert sheets, when required, are received by the Commissioner, the same will be executed by the Commissioner as above provided and entered upon the records of the Commissioner. After execution by the Commissioner, one copy of the lease or permit, including the insert sheets when required, will be returned to the lessee or permittee with a receipt for the payment of rental.

## CHAPTER 5. STATE LAND DEPARTMENT

If the lease, permit and insert sheets, when required, are not executed by the lessee or permittee and returned to the Commissioner, together with the payment of the rental as indicated by the statement therefor forwarded with such instruments, within 60 days from the date of mailing by the Commissioner, the lease or permit will be declared to be null and void and of no force and effect, and the land will become open and available for leasing by other persons. Provided, however, that should the applicant object to the appraised rental value, he may appeal from said appraisal as provided by law and the rules and regulations of the Department to the Board of Appeals of the State Land Department without prejudice to his rights to the offered lease or permit.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-509 renumbered from Section R12-5-108 (Supp. 93-3).

**R12-5-510. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-510 renumbered from Section R12-5-109 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-511. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-511 renumbered from Section R12-5-110 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-512. Assignments**

- A.** A lessee or permittee of state lands not in default in his rentals and who has kept and performed all the conditions of his lease or permit may, but only with the written consent of the Commissioner, assign such lease or permit.
1. Application for assignment shall be made on the appropriate form prescribed by the Commissioner.
- B.** An application for assignment of a lease or permit made within the 30 days immediately preceding the end of any lease year of the pertinent lease or permit will not be accepted for filing by the Commissioner unless the next year's advance rentals have been made.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-512 renumbered from Section R12-5-111 (Supp. 93-3).

**R12-5-513. Manner of Assignments**

Except as otherwise provided by law or these rules and regulations, assignments may be for all or part of the lands covered by a lease or permit. An application for assignment by the lessee or permittee, together with an application for transfer and assumption of lease or permit shall be submitted upon forms furnished and approved by the Commissioner. The applications shall be accompanied by the required fees, together with the lease or permit being assigned. The application for such assignment and the application for transfer and assumption of a lease or permit shall be signed by the parties as provided in these rules and regulations and acknowledged before a notary public or other officer authorized to administer oaths. The Commissioner shall indicate on the application to assign and application for transfer and assumption of lease or permit his approval or disapproval of the application, which action shall be made of record by the Commissioner.

In the event the assignment is a partial assignment and only covers a part of the leased or permitted lands, the description of the lands

being transferred must be by legal subdivision or by metes and bounds based on an actual survey upon which acreage can be determined, together with a map or such survey if required by the Commissioner; otherwise no approval to said assignment and assumption will be granted by the Commissioner. An assignment may be only for a divided or undivided interest.

No assignment shall be made without the consent of all parties of record in the State Land Department in writing who may have a lien or encumbrance upon the lessee's or permittee's interest in said lease or permit.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-513 renumbered from Section R12-5-112 (Supp. 93-3).

**R12-5-514. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-514 renumbered from Section R12-5-113 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-515. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Amended effective October 4, 1978 (Supp. 78-5). Section R12-5-515 renumbered from Section R12-5-114 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-516. Repealed****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-516 renumbered from Section R12-5-115 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3).

**R12-5-517. Rentals**

Rentals for leases and permits shall be as hereinafter fixed. All rentals must be paid annually in advance, except as may be provided in the lease or permit or otherwise authorized and directed in writing by the Commissioner.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-517 renumbered from Section R12-5-116 (Supp. 93-3).

**R12-5-518. Rental Notices**

If the rental is changed, the Commissioner shall notify the lessees and permittees at their last known address in the Commissioner's records; lessees and permittees shall be notified by the Commissioner of a change in rental, by sending a notice thereof by mail at least 30 days prior to the date upon which said rental is fixed by the Commissioner to be due, and any such notice shall be presumptively deemed to have been received on the day following which such notice is deposited in the U.S. Mail by the Commissioner. In all other cases, the Commissioner shall mail out rental notices which rents shall be paid within 30 days or on the due date whichever is the later; the Commissioner shall assume no responsibility if the notices are not acted upon.

## CHAPTER 5. STATE LAND DEPARTMENT

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-518 renumbered from Section R12-5-117  
(Supp. 93-3).

**R12-5-519. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-519 renumbered from Section R12-5-118  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-520. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-520 renumbered from Section R12-5-119  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-521. Modification or Amendment of Existing Lease or Permit**

No existing lease or permit shall be modified or amended for a term any different than the term set forth therein unless mutually agreed upon by the Commissioner and the lessee or permittee.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-521 renumbered from Section R12-5-120  
(Supp. 93-3).

**R12-5-522. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-522 renumbered from Section R12-5-121  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-523. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-523 renumbered from Section R12-5-122  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-524. Sale, Mortgage or Lien on Interest of Holder of Lease or Permit**

The interest of the holder of any lease or permit shall be subject to sale, mortgage or other lien to the same extent as patented land. No contract of sale, mortgage or other lien shall become effective unless and until an executed or conformed copy thereof showing the recording data is filed with the Commissioner. When so filed, no assignment of the lease or permit affected shall be made without the consent of all parties. Upon the foreclosure of a contract of sale, mortgage or other lien filed with the Commissioner, the Commissioner shall assign the instrument in question to the party entitled thereto.

No action shall be taken by the Commissioner affecting the rights of the lienholder, mortgagee or contract purchaser or seller affecting the canceling, modification or declaration of the lien or permit to be forfeited without written notice to all parties in interest.

If a mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment, receives full satisfaction of a mortgage, deed of trust or other obligation evidence of which has been filed with the Commissioner, he shall, at the request of the person making satisfaction or the Commissioner file with the Commissioner a sufficient release or satisfaction of mortgage or deed of release of the mortgage or deed of trust or lien.

Filing of these documents in no way obligates the Commissioner to the terms of them.

The Commissioner may on his own initiative, or at the request of a lessee or permittee, request of any mortgagee, trustee under a deed of trust, lienholder or other person entitled to payment who has filed with the Commissioner evidence of an obligation as set forth above, to notify the Department in writing as to the principal balance remaining due, if any, on such obligation; such request shall be made in writing and shall be mailed by the Commissioner to the last known address of record of such obligee -- the failure of such obligee to respond within 90 days from the date of receipt of such notice shall ipso facto be deemed as a consent by such obligee to any action that may be taken thereafter by the Commissioner with respect to any land covered by such mortgage, deed of trust, contract of sale; or other instrument evidencing an obligation.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-524 renumbered from Section R12-5-123  
(Supp. 93-3).

**R12-5-525. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-525 renumbered from Section R12-5-124  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-526. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-526 renumbered from Section R12-5-125  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-527. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-527 renumbered from Section R12-5-126  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-528. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-528 renumbered from Section R12-5-127  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-529. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-529 renumbered from Section R12-5-128  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-530. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4).  
Section R12-5-530 renumbered from Section R12-5-129  
(Supp. 93-3). Section expired under A.R.S. § 41-1056(E)  
at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-531. Expired**

## CHAPTER 5. STATE LAND DEPARTMENT

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-531 renumbered from Section R12-5-131 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-532. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-532 renumbered from Section R12-5-131 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**R12-5-533. Trespass on State Land**

- A.** Whoever knowingly and wilfully commits a trespass upon state lands, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing, cutting, or removing any hay or grass thereof or therefrom or the grazing of livestock thereon, unless he shall have pending an application for the leasing of such lands, or by extracting or removing any oils, gases, coal, minerals, earth, rocks, fertilizer or fossils of any kind or description thereon or therefrom, or who, without right, injures or removes any building, fence or improvements thereon, or unlawfully occupies, plows or cultivates any of said lands, or negligently or wilfully exposes growing trees, shrubs, or undergrowth standing thereon to danger or destruction by fire, shall be guilty of a misdemeanor.
- B.** Whoever commits any trespass upon state lands, as above stated, shall also be liable in a civil action, brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by such trespass, if the trespass was wilful, but for single damages only, if casual or involuntary. In the case of unfenced state land included within a fenced range, it shall be prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the defendant shall have pending an application for the leasing of such lands. The damage referred to will be the rate per acre as found for the year for the appraised carrying capacities of the land. The Commissioner may also, without legal process, seize and take any product or property whatsoever unlawfully severed from such land, whether the same has been removed from such land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of the products of state lands. The county officers of the several counties shall report to the Commissioner any trespass upon state lands which may come to their knowledge.
- C.** All lessees and permittees and holders of Certificates of Purchase are requested to inform the Commissioner in writing of any trespass committed on state lands, giving full information concerning such acts of trespass and by whom the same has been committed.
- D.** It shall be unlawful to utilize any type of motorized vehicle for travel on state trust lands except:
1. By the general public using public roads and highways that cross state trust lands;
  2. By lessees and permittees of the Department acting within the limits of their leases and permits, employees of public agencies acting within the scope of their duties, and any persons using military, fire, search and rescue, or law enforcement vehicles for emergency purposes; and
  3. By holders of valid Arizona hunting, fishing, or trapping licenses within the scope of such license:
    - a. On existing roads; or

- b. For cross-country travel without damaging croplands, improvements, or cultural or historic sites to pick up legally killed big game animals.
- E.** For the purpose of this Section, the following definitions apply:
1. "Cross-country travel" means travel over the countryside other than on existing roads.
  2. "Existing road" means any maintained or unmaintained way, road, highway, trail, or path that has been utilized for motorized vehicular travel and clearly shows or has a history of established vehicle use. A one-time use or a single set of vehicle tracks created by an off-highway vehicle does not constitute a road under this definition.
  3. "Motorized vehicle" means any vehicle deriving motive power from any source other than muscle or wind.
  4. "Public roads and highways" means the entire width between the boundary lines of every public road or highway maintained by the Federal Government, the state, the Department, or a city, town, or county if any part of the road or highway is generally open to the use of the public for purposes of vehicular travel.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-533 renumbered from Section R12-5-132 (Supp. 93-3). Amended effective May 20, 1994 (Supp. 94-2).

**R12-5-534. Closing Land to Recreational Use**

- A.** The Commissioner may close Trust land in a specific area to recreational use for any of the following purposes when the Commissioner determines that it is in the best interest of the Trust and this state to restrict recreational access to reduce liability to the state or protect the public:
1. Dust abatement: To abate dust caused by the unauthorized use of motorized or non-motorized off-road vehicles on Trust land;
  2. Human-caused hazardous environmental conditions: Conditions posing a risk to the public health or safety resulting from human-caused environmental hazards. Examples include illegal dumping of toxic or hazardous materials, leaking or abandoned underground storage fuel tanks, abandoned or unauthorized landfills, abandoned airfields used for pesticide or herbicide storage, abandoned mine workings, and other sites with similar characteristics;
  3. Naturally-occurring hazardous conditions: To reduce the risk from naturally-occurring conditions posing a risk to public health or safety. Examples include fissures, sink holes, and flood-damaged areas; or
  4. Damaged Trust lands: For protection or remediation of Trust lands that have been damaged by toxic or hazardous materials, mining, fires, off-road vehicles, or other human-caused or natural occurrences.
- B.** The Commissioner shall, by order, close land only to the extent necessary to prevent unauthorized recreational access, and shall specify the period of time deemed necessary for closure.
- C.** The Department shall post the order of Trust land closure to recreation in the Department's Public Records Room at 1616 W. Adams, Phoenix, AZ 85007 and in the Department's District Offices. The Department shall maintain evidence of public notice of Trust land closure in the Department's records.
- D.** For the purpose of this Section, the following definitions apply:
1. "Dust abatement" means to minimize the amount of particulate matter entrained into the air by requiring mea-

## CHAPTER 5. STATE LAND DEPARTMENT

asures to prevent or mitigate particulate matter creation or emissions.

2. "Environmental hazard" means a chemical, physical agent, biological toxin, or other pollutant that is present in the environment and that may cause human illness or injury.
3. "Remediation" means an environment cleanup or other method used to remove or contain hazardous materials, stabilize mining waste, stabilize soil damage, or restore rangeland or native vegetation.

**Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-534 renumbered from Section R12-5-133 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 3817, effective October 4, 2003 (Supp. 03-3). New Section made by final rulemaking at 12 A.A.R. 481, effective April 8, 2006 (Supp. 06-1).

**R12-5-535. Expired****Historical Note**

Original rule, Art. I, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-535 renumbered from Section R12-5-134 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 1428, effective March 31, 2003 (Supp. 03-2).

**ARTICLE 6. IMPROVEMENTS (RESERVED)****ARTICLE 7. SPECIAL LEASING PROVISIONS****R12-5-701. Repealed****Historical Note**

Adopted effective May 28, 1981 (Supp. 81-3). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to A.R.S. 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-701 renumbered from Section R12-5-150 (Supp. 93-3). Section repealed by summary action with an interim effective date of February 4, 2000; filed in the Office of the Secretary of State January 11, 2000 (Supp. 00-1). Interim effective date of February 4, 2000 now the permanent effective date; filed in the Office of the Secretary of State August 1, 2000 (Supp. 00-3).

**R12-5-702. Agricultural Leases**

- A. Land subject to agricultural lease; term of lease
  1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.
    - a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.
- B. Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.
- C. Application for agricultural lease
  1. Application for an agricultural lease shall be made upon the appropriate form as provided by the Department and in accordance with the general rules and regulations governing the leasing of state lands.
    - a. Each application shall be limited to the lands in one section or part thereof.
- D. Rental rates; appraisal
  1. No agricultural lease shall provide for a rental less than the appraised rental value of the leased land, and in no event a rental less than \$1.00 per acre per annum.

2. Minimum rental for each agricultural lease shall be \$10.00 per annum; provided, however, that the minimum rental of \$10.00 per annum shall apply to each section or portion thereof covered by the lease.

- E. Number of leases issued on farm unit
  1. Ordinarily, leases issued by the Department will combine into one lease, all contiguous and adjoining state agricultural lands within the lessee's farm unit.
    - a. It is recognized that such consolidation may work hardship on the lessee because of the resultant common due date of rentals.
      - i. A lessee thus affected and desirous of dividing his lease may make application to the Department to do so. Such application shall be in writing, setting forth the reasons therefor in such detail as to enable the Department to act with full knowledge of the circumstances.
      - ii. If such application is approved by the Department, division of the lease will be made in as reasonable a manner as possible, compatible with the best interests of the state.
- F. Agricultural lease form; provisions. Agricultural leases shall be made on the appropriate form provided by the Department, and shall contain such provisions and supplemental conditions as may be prescribed by the Commissioner in accordance with the provisions of the law and Department rules and regulations.
- G. Sequence of development and improvement of lands under agricultural development lease
  1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.
  2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved until after the acquisition of such water supply has been accomplished or assured and in all cases only after proper application made and approval had in accordance with the provisions of the Department's rules and regulations in regard to permits to place improvements.
  3. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply with the requirements of the Commissioner, the Commissioner may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.
- H. Application for renewal; right of renewal; developmental lease
  1. Application for renewal of an agricultural lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.
    - a. A separate application form shall be submitted for each section of land or portion thereof within the lease.
    - b. The filing fee for each application shall be the same as for an initial application.
  2. A preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not

### 37-103. Seal of state land department

The state land department shall have a seal, and it shall be affixed with the signature of the state land commissioner to all instruments of conveyance, leases, certificates and other official acts. The signature of the commissioner and seal of the department upon the original or copy of any paper, plat, map or document from the state land department shall impart verity thereto.

### 37-132. Powers and duties

#### A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to section 37-202.
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10 and, except as provided in section 41-1092.08, subsection H, are subject to judicial review pursuant to title 12, chapter 7, article 6.
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by this state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by this state, but any such lease for a term longer than ten years for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.
9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4 and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to section 38-611.
10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.
11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

#### B. The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.
2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under section 37-107, subsection B, paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20 and that provides the purchaser or lessee at auction. The

purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required may not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required may not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to section 37-107.

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to section 9-461.06 or 11-805.

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to section 37-312.

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department may not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

### 37-215. Appeal from decision of commissioner or board of appeals

- A. An appeal from a final decision of the state land commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision. Appeals shall be taken by giving notice in writing to the commissioner within thirty days from the date notice of the decision is mailed to the last known post office address of the appellant by the commissioner.
- B. As a condition for filing an appeal of an order regarding an appraisal conducted under section 37-285 or a reappraisal required by the terms of a lease, the appellant, with the notice of appeal, shall pay to the department all amounts of the billed rental during the pendency of the appeal. The disputed amount shall be held by the state treasurer in an impound fund to be invested subject to the final disposition of the appeal, and the undisputed amount shall be credited to the appropriate trust. If the appellant fails to pay any amount before the deadline for filing notice of the appeal and fails to provide proof of payment of the amount with the notice of appeal, any notice of appeal to the board of appeals or to superior court shall not be accepted for filing and the decision of the commissioner is final. If billed rental becomes due during the pendency of an appeal and is not paid on or before the due date, the appeal shall be dismissed and the decision of the commissioner is final. If the commissioner's decision is upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be paid to the appropriate trust. If the commissioner's decision is not upheld on final disposition of the appeal, the monies in the impound fund, with interest, shall be credited first to the accrued rent determined to be due and the remainder shall be paid to the appellant.
- C. The board of appeals, within one hundred twenty days from the date of the notice of appeal, shall conduct a hearing in the county in which the major portion of the land involved in the appeal is located, unless otherwise stipulated by the parties to the appeal. The board shall render its decision upon the hearing within sixty days from the date of the hearing unless the parties to the appeal otherwise stipulate. The board shall make its findings and decision in writing and shall furnish a copy to all parties to the appeal. A majority of a quorum of the board may render the decision.
- D. All records of the board of appeals shall be kept in the offices of the state land department. The department shall provide clerical assistants to the board as necessary to perform its duties.
- E. Except as provided in section 41-1092.08, subsection H, the commissioner or any person adversely affected by a final decision of the board of appeals may seek judicial review pursuant to title 12, chapter 7, article 6.
- F. Any person adversely affected by a final decision of the commissioner not relating to the classification or appraisal of lands or improvements is entitled to a hearing pursuant to title 41, chapter 6, article 10.
- G. If no appeal is taken, the decision of the commissioner or the board of appeals, as the case may be, is final and conclusive.

37-233. Sale of state lands; restriction on sale of timber land; expense of sale

- A. On receiving an application, or on the commissioner's initiative, the state land department, under the rules of the department, may cause state lands to be sold if the sale of them is not prohibited by law.
- B. Land containing timber of a value which in the opinion of the commissioner should be sold separately from the land shall not be subject to sale until after the timber is sold.
- C. When an application is filed with the department for selection or sale of land under the laws of this state, and the department determines that the benefit to be derived from the selection or sale is less than the expense involved, the commissioner may accept from the applicant an amount of money sufficient to pay the expense incidental to the selection or sale. If the applicant fails to secure a lease after selection of land, or fails to purchase land after bidding for it, the successful lessee or purchaser shall reimburse the original applicant for all funds so advanced.

37-244. Certificate of purchase; conditions

A. Upon compliance by a purchaser of state lands with the requirements of this article, the department shall make and deliver to the purchaser a certificate of purchase, which shall set forth:

1. The name of the purchaser.
2. A description of the entire tract of land purchased.
3. The amount paid.
4. The amount paid for improvements, if any.
5. The amount remaining due.
6. The date when each of the deferred payments falls due, the amount of each deferred payment and the rate of interest on the first deferred payment.
7. An agreement by the purchaser that he will pay taxes, water assessments and other charges which may be assessed against the land.

B. Each certificate of purchase shall be signed by the commissioner or his deputy and by the purchaser, and shall contain the following covenants in addition to any others imposed pursuant to section 37-132:

1. That the purchaser will not permit any loss or commit any waste to or upon the lands.
2. That any right to the use of water appurtenant to the lands shall be maintained to prevent the forfeiture or abandonment of the right.
3. That all taxes levied against the land and all construction and maintenance charges of a United States reclamation project from which the lands may receive water will be promptly paid.
4. That all things will be done to insure the acquisition and maintenance of the rights and the use of the water, except if the successful irrigation of lands susceptible to irrigation from works constructed or controlled by the United States government is not dependent upon the irrigation works it shall not be necessary to acquire and maintain water rights on such lands.

C. After sale of state land and issuance of a certificate of purchase, the department shall not issue a certificate of purchase that covers only a part of the entire tract of land sold for the purposes of obtaining a patent to part of the land.

37-246. Sale of natural products of lands by purchaser under certificate of purchase; disposition of proceeds; violation; classification

- A. If a purchaser of state land under a certificate of purchase sells or contracts to sell directly or indirectly any sand, gravel, stone or other natural product from the land described in the certificate, he shall file with the department within ten days after the sale or making the contract, a statement under oath on a form furnished by the department, of the kind and quantity of natural product sold, the terms of the sale, and the amount received or to be received therefor.
- B. Upon receipt of any money from a sale or contract described in subsection A, the holder of the certificate shall promptly pay the money to the department. The money shall be applied by the department first to payment of the interest accrued under the certificate, and the remainder, if any, to payment of the principal amount owing on the land described in the certificate. If the payment is sufficient to discharge the total debt owing under the certificate, with accrued interest thereon, the department shall issue a patent to the purchaser as provided in this article.
- C. The department shall cancel the certificate of purchase of a purchaser of state land who fails or refuses to make or knowingly makes any false statement in any statement required by subsection A, or who fails or refuses to pay to the department any money required to be paid by subsection B. The land described in the certificate, together with all improvements thereon, shall revert to the state, and all amounts theretofore paid for the land by the purchaser shall be forfeited to the state.
- D. A person who violates a provision of this section is guilty of a class 2 misdemeanor.

### 37-251. Issuance of patents for state lands

- A. On filing the certificate of purchase, together with evidence of full payment of principal and interest, for the entire tract of land sold, and evidence that all terms and conditions of the certificate of purchase have been satisfied, the department shall issue to the purchaser a patent under the seal of this state, signed by the governor and countersigned by the secretary of state.
- B. On application by the purchaser, a patent for less than the entire tract may be issued to the purchaser if the commissioner finds that it is in the best interest of the applicable trust, subject to the following:
1. The parcel to be patented may consist of one or more pieces of land, described either by metes and bounds or by legal subdivision.
  2. Before any parcel less than the entire tract is patented, the department shall determine that the remaining lands are of greater value than the unpaid balance of the certificate of purchase and that the remaining lands have development potential independent of the acreage that is being patented. Before patenting, the commissioner shall require to be paid an amount, on the lands to be patented, in excess of the purchase price per acre of the entire tract until the total price of the entire tract has been paid. In establishing the amount to be paid for the partial patent, the commissioner shall take into account the amount of the down payment made on the entire tract. This paragraph does not affect certificates of purchase issued before September 30, 1988.
  3. When paid, the partial purchase price shall be credited on the total purchase price stated in the certificate of purchase. The department may issue a supplement to the certificate of purchase deleting the land patented and reducing the amount of each of the remaining annual installments to that amount which, when all installments are paid in full, will discharge the entire unpaid balance due on the original certificate of purchase.
- C. Any land patented under this section is subject to existing valid rights-of-way.
- D. If the purchaser has died and the land described has been sold and confirmed by order of court, the patent shall be issued to the purchaser to whom confirmation of sale was made. If the estate of the deceased person is distributed by order of the court, the patent shall be issued to the heirs of the deceased person, or to the person to whom the lands are distributed. Patents issued to a deceased person shall inure to the benefit of the heirs or assigns of the deceased person.
- E. If an assignment of the certificate of purchase has been filed with and approved by the department, the patent shall be issued to the assignee, and if proper evidence of a transfer of the certificate by operation of law is filed with the department, the patent shall be issued to the transferee.
- F. A record of all patents issued shall be kept in the records of the department.

### 37-255. Sale of or mortgage or other lien on interest of lessee or holder of certificate of purchase

A. The interest of the holder of any certificate of purchase of state land, or any lease or permit on state land, shall be subject to sale, mortgage or other lien to the same extent as patented land, without prejudice to the state. A contract of sale, mortgage or other lien affecting any certificate of purchase, lease or permit on state land shall not become effective unless a copy of the document is filed with the state land department. When filed, no assignment of the certificate of purchase, lease or permit affected shall be made without notice to and the consent of all parties.

B. Upon foreclosure of a contract of sale, mortgage or other lien filed with the department as provided in subsection A of this section, the department shall assign the instrument in question to the party entitled to the instrument, if all taxes, rent and assessment payments are current.

C. If a cancellation or assignment order is issued pursuant to section 37-247, 37-281.04 or 37-289, the cancellation or assignment order shall not become final until any foreclosure action by a party registered with the department as a mortgagee or other lienholder of the purchaser's interest or the lessee's interest is finally resolved, if the mortgagee or lienholder does both of the following:

1. Within thirty days of the date of issuance of a notice of default, files written notice with the department of its intent to proceed with a foreclosure action.

2. Within one hundred twenty days of the date of issuance of a notice of default, has commenced either a foreclosure action in court or a nonjudicial foreclosure of a deed of trust, and has provided the department with a certified copy of the complaint or other document that officially commences the foreclosure process, and thereafter prosecutes the foreclosure with reasonable diligence.

D. If a default notice has been sent to a purchaser pursuant to section 37-247, subsection A or to a lessee pursuant to section 37-289, subsection A, and the purchaser or lessee thereafter applies to assign the certificate of purchase or lease to a mortgagee or lienholder registered with the department, before the date a cancellation or assignment order becomes final and conclusive, the department shall approve the assignment if all taxes, purchase payments, rent and assessment payments are current and subject to the written consent of any other mortgagees or lienholders of record.

E. On proof that a lessee or purchaser has rejected a lease or certificate of purchase in a bankruptcy proceeding, the department shall issue a lease or certificate of purchase to the registered mortgagee or other lienholder in order of priority on application by the mortgagee or other lienholder within thirty days after the rejection if all taxes, purchase payments, rent and assessment payments are current. Any lease or certificate of purchase that is issued pursuant to this subsection shall be for the remaining term and on the same conditions and priority as the rejected lease or certificate of purchase.

37-281. Lease of state lands for certain purposes without advertising; terms and conditions

A. All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

B. No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

C. Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

D. No lessee shall use lands leased to him except for the purpose for which the lands are leased.

E. No lessee shall sublease lands leased to him without written permission of the state land department.

### 37-284. Conflicting short-term lease applications; preference rights

- A. A conflicting application for an existing lease for a term of not more than ten years shall be filed at least two hundred seventy days but not more than one year before the expiration date on the lease. The conflicting application must be accompanied by a list of nonremovable improvements on the leased lands on file with the department, including fences. The conflicting applicant must post a surety bond or other form of security in the amount of two thousand five hundred dollars or twenty per cent of the rental payments over the term of the current lease, whichever is greater. The department shall calculate the amount of the security within thirty days after receiving the conflicting application, and the conflicting applicant must post the security within thirty days after the department determines the amount. If the conflicting applicant is unsuccessful or withdraws the application, the department shall return the security to the applicant. If the conflicting applicant is successful, the security shall be applied against the value of the nonremovable improvements.
- B. When the department receives a conflicting application, the department shall give the existing lessee thirty days' notice to file an application for renewal pursuant to this section.
- C. If two or more applicants apply to lease the same land for a term of not more than ten years, the department shall approve the application of the one who, after investigation or hearing, appears to have the best right and equity to the lease. The order of filing shall not be a controlling factor in deciding who is entitled to the lease. If it appears that none of the applicants has any right or equities superior to those of another that would outweigh an offer of additional rent, and if it is in the best interest of the trust, the department, at a stated time and after due notice to all applicants, may receive bids submitted in accordance with rules of the department. If one of the competing applicants is the existing lessee who has a preferred right of renewal pursuant to section 37-291, the department shall extend the preferred right of renewal to the existing lessee if the existing lessee offers a bid matching the highest bid. The department shall approve the application of the bidder who in all respects is eligible to receive a lease upon the land and will pay the highest annual rental, or the department may reject all bids.
- D. Before the department issues a lease to the successful bidder, the successful bidder shall pay one full year of rent and, unless all parties agree to an extended payment schedule, the appraised value of any nonremovable improvements pursuant to section 37-322.01. If the successful bidder does not pay one full year of rent or the value of any nonremovable improvements within thirty days after the department requests payment, the department may offer the lease to the next best bidder. A lease that is issued pursuant to this section shall require the lessee to pay annual rent that is equal to the amount of annual rent bid, unless a reappraisal or rental adjustment requires a higher amount.
- E. Any person residing upon contiguous land for which the person has an allowed United States homestead entry or for which the person has received a patent from the United States upon a homestead entry, upon application, shall have a preferred right to lease the amount of contiguous state land necessary for personal use.
- F. Any person lawfully occupying any lands, the title to which is acquired by the state by operation of law, shall have a preference right to lease the occupied land provided application to do so is made within thirty days from and after written notice by the department to such occupant of the acquisition of title.

37-286. Execution of leases by land department; covenants; assignment of lease by lessee

A. Leases shall be signed by the commissioner and sealed with the seal of the state land department, and shall contain covenants that the lessee will not permit any loss, cause any waste in or upon the land, or cut, waste or allow to be cut or wasted, any timber or standing trees thereon without written consent of the department, except for fuel for domestic uses, or for necessary improvements on the land, and that the lessee will surrender peaceable possession of the lands at the expiration of the lease. Nothing in this section shall be construed to permit the cutting of saw timber for any purpose without the written consent of the department.

B. A lessee of state lands who is not in default in rent, and who has kept and performed all the conditions of his lease, may, with the written consent of the department, assign the lease, but a lessee who assigns a holding lease shall pay to the department one-half of the consideration received for the assignment.

37-288. Default on short-term lease; forfeiture and cancellation of lease; extension of time for payment; penalty and interest on delinquent rental; automatic termination for arrearage

- A. If a lessee of a lease of ten years or less defaults in a payment of rent, as provided in the lease, or fails to comply with a condition, covenant or requirement of the lease, the lease and the lessee's rights under the lease are subject to forfeiture and cancellation as provided by this section and section 37-289.
- B. If the lessee of a lease of ten years or less fails to pay the rent when due, the department may extend the time for payment an additional period not to exceed ninety days. The department shall not extend the period for payment of rental more than three times in one lease year and in no event for more than two hundred seventy days.
- C. There shall be added to the delinquent rental a penalty and delinquent interest. The rate of interest on delinquent rent shall be set by the state treasurer. The penalty shall be the greater of a minimum processing cost as determined by the commissioner or five per cent. The delinquent rent, penalty and interest shall be a lien on the improvements, crops and property on the land.
- D. If, on a lease of ten years or less, the annual rental at any time is one calendar year in arrears from the date the rental payment was due, the lease shall automatically terminate and the department shall proceed to cancel it on the records of the department.

37-294. Recovery of lands unlawfully held

A. Nothing in this article shall confer any rights upon occupants or lessees of lands who have not executed and received a lease under the provisions of this article.

B. The state land department shall examine into the rights of all persons in possession of state lands, or improvements thereon, or claiming compensation for improvements on the lands. If it is determined that any person is unlawfully in possession of such lands, or is unlawfully claiming compensation for improvements, the department shall bring an action to recover possession of the lands and improvements, or otherwise establish the rights of the state.

### 37-301. Procedure for protesting auctions

A. Any person who desires to protest any of the terms of a proposed auction for the sale of state land, the lease of state land, or the sale of natural products of state land shall file a written protest with the department within thirty days after the first day of publication of the terms of the proposed auction. All protests shall state specifically the term or terms of the auction to which objection is made and state specifically the reasons for each objection. An objection not specifically stated or timely made is deemed to be waived.

B. At his discretion, the commissioner, on ten days' notice, may order a hearing on any protest. Whether or not a hearing is held, the commissioner, not less than seven days before the auction date, shall enter a final order determining the validity of the protests. If the commissioner determines that a protest is correct, the pending auction shall be cancelled. If the commissioner determines that the grounds of protest are incorrect, the auction shall proceed at the time and place for which it was noticed.

C. Notwithstanding section 37-133, the commissioner's order granting or denying a protest is subject to review only through a special action to the court of appeals or supreme court, served on the department within twenty days after the commissioner's order is entered. Notwithstanding any law or rule applicable to other orders of the commissioner, no motion for rehearing is required before seeking review of an order of the commissioner rejecting a protest to the terms of an auction. Any rehearing motion shall be filed within ten days of the entry of the commissioner's order. Unless otherwise ordered by the commissioner, the filing of a motion for rehearing does not extend the time for seeking review of the commissioner's order granting or denying a protest. Unless the commissioner orders a rehearing within five days after the rehearing motion is filed, the rehearing motion is deemed denied. If a special action review is not sought within twenty days after the commissioner enters his order granting or denying a protest, or if the commissioner's order is sustained on special action review and the decision becomes final, no further action contesting the legality of the terms of the auction may be brought.

37-501. Trespass on state lands; classification

A person is guilty of a class 2 misdemeanor who:

1. Knowingly commits a trespass upon state lands, either by cutting down or destroying timber or wood standing or growing thereon, by carrying away timber or wood therefrom, by mowing, cutting, or removing hay or grass thereon or therefrom, or by grazing livestock thereon, unless he has a lease or sublease approved by the department for the area being grazed.
2. Knowingly extracts or removes oil, gas, coal, mineral, earth, rock, fertilizer or fossils of any kind or description therefrom.
3. Knowingly without right injures or removes any building, fence or improvements on state lands, or unlawfully occupies, plows or cultivates any of the lands.
4. With criminal negligence exposes growing trees, shrubs or undergrowth standing on state lands to danger or destruction by fire.

37-502. Damages in civil action for trespass on state lands; seizure of products; report of trespasses

- A. Whoever commits any trespass upon state lands as defined by section 37-501 is also liable in a civil action brought in the name of the state in the county in which the trespass was committed, for three times the amount of the damage caused by the trespass, if the trespass was wilful, but for single damages only if casual or involuntary.
- B. When unfenced state land is included within a fenced range, it is prima facie evidence of wilful trespass to permit the grazing of livestock thereon, unless the person has a lease or sublease approved by the department for the area being grazed.
- C. The damage provided for in this section is the rate per acre as determined for the year for the appraised carrying capacity of the lands.
- D. The state land department may also, without legal process, seize and take any product or property unlawfully severed from the land, whether it has been removed from the land or not, and may dispose of the product or property so seized in the manner prescribed by law for disposing of products of state lands.
- E. The county officers of the several counties shall report to the department any trespass upon state lands which comes to their knowledge.

**ARIZONA STATE LAND DEPARTMENT**  
Title 12, Chapter 5, Articles 7-9, 11



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 6, 2022; June 6, 2023; February 6, 2024; March 5, 2024

**TO:** Members of the Governor's Regulatory Review Council (Council)

**FROM:** Council Staff

**DATE:** January 16, 2024

**SUBJECT: STATE LAND DEPARTMENT**  
Title 12, Chapter 5, Articles 7-9, 11

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### Summary

As a reminder, the State Land Department (Department) originally submitted this Five-Year Review Report (5YRR) for Title 12, Chapter 5, Articles 7-9 and 11 on July 29, 2022. Therein, the Department identified rules that were inconsistent, not clear, concise, and understandable, not enforced as written, and overly burdensome. However, the Department did not put forth a proposed course of action to address the problematic rules. At the November 1, 2022 Council Meeting, the Council voted to return the 5YRR for the rules in Title 12, Chapter 5, Articles 7-9 and 11 in whole pursuant to A.R.S. § 41-1056(C) for its lack of a proposed course of action to address issues identified in the report under A.R.S. § 41-1056(A). At the December 6, 2022 Council Meeting, the Council voted to direct the Department to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9 and 11 with an updated proposed course of action by July 1, 2023.

On May 22, 2023, Council staff received an extension request from the Department to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9 and 11 by November 1, 2023. At the June 6, 2023 Council Meeting, the Council voted to grant the extension to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9 and 11 by November 1, 2023. On October 27, 2023, the Department resubmitted the revised report which is before the Council now for consideration.

This 5YRR relates to eleven (11) rules in Title 12, Chapter 5, Articles 7-9 and 11. These articles cover the following topics:

- **Article 7** governing Special Leasing Provisions contains three rules: agricultural leases (R12-5-702), grazing leases (R12-5-703), and commercial leases (R12-5-705)
- **Article 8** governing Right-of-way contains two rules: one pertaining to rights-of-way generally (R12-5-801) and one specifically for Reservoir, Dams, and Other Sites (R12-5-802).
- **Article 9** governing Exchanges contains five rules pertaining to scope of rules (R12-5-901), definitions (R12-5-902), application (R12-5-904), maps and photographs (R12-5-910), and controversy as to title or leasehold rights (R12-5-918).
- **Article 11** governing Special Use Permits (also known as Special Land Use Permits) contains one rule (R12-5-1101 Policy; Use of Lands).

The Department's previous review of these rules, which was approved by the Council in January 2018, stated, at that time, that many of the rules should be amended. Specifically, the Department stated that it recognized the flaws within the rules and planned to amend them to strike language that is inconsistent with statute, agency operations, or the Arizona Constitution. Also, the Department stated in the previous report that language should also be added and modified to improve clarity and conciseness. The Department indicated in the previous report that it intended to begin the rulemaking process to amend the rules by March 2019. The Department indicates the prior proposed course of action was not completed.

### **Proposed Action**

In the current report, the Department indicates it intends to amend the rules to eliminate inconsistencies and redundancies and to articulate the Department's operations. The Department indicates the rules will be amended in April 2024.

Council staff notes, the Council previously voted, pursuant to A.R.S. § 41-1056(E), to require the Department to propose amendments to the rules in Title 12, Chapter 5, Articles 7-9 and 11 that the Department's analysis in its 5YRR demonstrated were materially flawed by being not authorized by statute, inconsistent with other statutes, rules, or agency enforcement policies, not clear, concise, and understandable, and not imposing the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule. The Department's current deadline to submit that rulemaking is April 30, 2024.

#### **1. Has the agency analyzed whether the rules are authorized by statute?**

The Department cites both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that there is no current Economic Impact Statement (EIS) to compare with a previous EIS, but offers the following statistics and analysis:

As of Fiscal Year 2021, the Department held: 348 Agricultural Leases covering 157,920 acres of Trust Land which generated \$4,265,005 in income; 1,196 Grazing Leases covering 8,344,576 acres which generated \$2,749,775 in income; 273 Commercial Leases covering 70,274 acres which generated \$31,888,877 in income; 7,818 Right-of-Way Grants covering 128,567 acres which generated \$9,614,946 in income; and 652 Use Permits covering 600,900 which generated \$4,419,661 in income.

The rental payments from all of the above leases are deposited into funds managed by the State Treasurer and distributed directly to the beneficiaries on a monthly basis. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provides opportunities for the labor force and businesses that supply services and goods directly, as well as support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Economic development is increased by rights-of-way that provide for the development of roads and utilities, and taxes are paid by the companies and individuals who engage in activities on Trust Land. The taxes are then utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community services.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that, while the rules need improvement to conform with updated Department operations, their general applicability and existence are necessary to provide transparency in their respective areas and articulate the land disposition types and programs that the Department executes.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules over the last five years and since the last 5YRR was submitted to the Council.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are generally clear, concise, and understandable except for the following rules:

- **R12-5-702:** The Department indicates this rule has redundancies. Specifically, subsection (C)(1) is consistent with yet redundant of A.R.S. § 37-281(B); subsection (F)

is consistent with, yet redundant of, A.R.S. § 37-285; and subsection (H)(1) is consistent with, yet redundant of, statute.

- **R12-5-703:** The Department indicates subsection (A) is not concise because it is unnecessary; subsection (B) is not concise because the first portion is addressed in statute; and subsection (C) is not concise because it is redundant of the Enabling Act.
- **R12-5-705:** The Department indicates the rule is not clear, concise, or understandable as it is redundant or inconsistent with statute, and conflicts with the Department's standard work and lease instruments. Specifically, the Department notes R12-5-705(C) is inconsistent in that it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201.
- **R12-5-801:** The Department indicates subsections (A)(1) and (A)(2) are redundant of statute and subsection (B) is not concise in that sub-subsection (1) is unnecessary and sub-subsection (2) would best be served by being relocated to subsection (C). Also, subsection (C)(1)(a) is not concise in that some of the language is overly restrictive. The Department indicates much of Subsection (C)(3) is not concise or clear; subsection (C)(5)(a) is not clear in that it does not refer to the regulation that promulgates Department-wide fees; and proposed changes to subsections not mentioned above may benefit from style or language changes to aid clarity and conciseness.
- **R12-5-802:** The Department indicates subsection (D) is partially not concise, as it could be combined with subsection (C) to address initial and renewal applications at the same time; subsection (E) is not clear and could benefit from redrafting; and subsection (I) is not clear nor concise and could benefit from redrafting.
- **R12-5-902:** The Department indicates the rule is clear and understandable, but it is not concise as three definitions - Commissioner, Department, and Selection Board - are redundant of statute and one definition - private owner - does not need to be defined as a legal term of art.
- **R12-5-1101:** The Department indicates the rule is not clear, concise, and understandable because the preamble publishes policy, which is improper; the preamble contains language which is redundant of language elsewhere within the rule; subsections (6) and (8) are unnecessary; subsection (9) is not clear not concise and should be redrafted; subsection (10) is partially not concise where "advertising display" is defined, and should be stricken, while the remainder of the subsection can be transferred to within subsection (9), except for (10)(f); and subsection (11) is unnecessary and redundant.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates the rules are consistent with other rules and statutes except for the following rules:

- **R12-5-702:** Subsection (B) is inconsistent with statute as the rule requires applicants to submit an application to have lands reclassified, but no such application is needed or taken if lands are to be reclassified as agricultural lands (*see* A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the Trust and of the

State); Subsection (C)(1)(a) is inconsistent with agency operations, as an applicant may currently apply to lease multiple sections of land using one application despite the restriction within the subsection (N.B. Fees are charged on a per section basis in accordance with A.A.C. R12-5-1201 despite the use of one application form.); Subsection D is inconsistent with itself and with statute: Sub-subsections (1) and (2) may possibly conflict with each other, as (D)(1) applies a minimum of \$1.00 per acre per year while (D)(2) applies a minimum rental of \$10.00 a year to each section or portion of a section. So, for example, under (D)(1), leasing 639 acres within a single section equals \$639.00 (\$1 x 639 acres, while under (D)(2), it amounts to \$10.00 (\$10.00 per section). Further, A.R.S. § 37-132(A)(5) authorizes the Commissioner to appraise state lands for leasing; A.R.S. § 37-285(A) requires agricultural leases to have annual rents not less than the appraised rental value subject to adjustment each year, with a minimum cap of \$0.05 per acre per year; and A.R.S. § 37-282.01(G) allows the Commissioner to conduct mass appraisals at their discretion – given market conditions, and other variable conditions that may warrant mass appraisal without a specified timeframe; (H)(1)(a) is inconsistent with agency operations, as it requires a separate renewal application to be submitted for each section, or portion thereof, of land, whereas currently only one application form, and (H)(1)(b) is inconsistent with the filing fees delineated in A.A.C. R 12-5-1201.

- **R12-5-703:** Subsection (B) is not inconsistent because it conflicts with the Department's mandate to determine the highest and best use of the land held in trust; Subsection (D) is inconsistent with agency operations because the Department does not receive applications to petition for reclassification of lands, but rather reclassifies the lands *sua sponte*; Subsection (H) is inconsistent with agency operations; and Subsection (M) is, in part, inconsistent with agency operations and inaccurate.
- **R12-5-705:** Subsection (B) is inconsistent with agency operations in that the Department does not impose age- or citizen-based restrictions on its applicants; Subsection (C) is inconsistent in that: 1) it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201; 2) it requires the use of forms, i.e., Land Division forms, that no longer exist; and 3) it indicates that if a renewal applicant has an up-to-date and current statement of his holdings within the ranch unit on file with the Department then completion of detailed questions concerning holdings on the application form are not required to be filled out, when in actuality, the applicant must provide a map of the leased land including any controlling interests in conjunction with the lease at the time of the renewal of the lease; Subsection (E) is inconsistent with statute and agency operations in that it requires applicants to apply to have lands reclassified as Grazing Lands but no such application is needed or taken if lands are to be reclassified as Grazing Lands (see A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the trust and of the state); Commissioner based on the recommendation of the grazing land valuation commission (See A.R.S. § 37-285); Subsection (G) is inconsistent with agency operations because it permits the splitting of a Grazing Lease into many leases to dissect due dates and payments of a large Grazing Lease into more palatable portions, which amounts to a hardship exception to the common anniversary date practice which the Department follows without exception (i.e.

all Grazing Lease rents are due in March); Subsection (H) is inconsistent with agency operations because the Land Division and its corresponding forms no longer exist; Subsection (K) is inconsistent with A.R.S. § 37-283(A) and the provisions of Department Grazing Leases; Subsection (L) is inconsistent with agency operations, as crops may not be grown on Grazing Lands under a Grazing Lease; Subsection (N) is inconsistent with agency operations as to the prescribed form which no longer exists, but the intent is consistent; and Subsection (O) is partially inconsistent with agency operations, as Grazing Leases are limited to grazing purposes.

- **R12-5-801:** Subsection (C)(2)(b) is inconsistent with agency operations as the agency does not require an application for each county crossed because it would be overly burdensome for the applicant and for the agency to implement; Subsection (C)(3)(xi) is inconsistent with agency operations and conflicts with (C)(4)(a); Subsection (C)(8)(c) is inconsistent with agency operations because the commencement date is not the date that the instrument is mailed to the applicant, as stated, but rather it is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction; Subsection (C)(8)(c) is inconsistent with agency operations; Subsection (D)(7)(a) is inconsistent with agency operations as the Department does not require this; and Subsection (E)(1)(a) is inconsistent with agency operations because the Department does not require applications to place improvements for Right-of-Way grantees.
- **R12-5-802:** Subsection (B) is inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction – it is fifty years; Subsection (C) is inconsistent with agency operations, and overly burdensome to the applicant. The agency has a standardized process for notifying surface and subsurface lessees of applications in queue, thereby avoiding confrontational interactions with existing and prospective users; Subsection (D) is partially inconsistent with agency operations, as non-use is not addressed in the way iterated, and the lease instruments don't authorize uses/purposes outside the scope/lease type; Subsection (F) is not consistent with agency operations and within itself, as the application of it could amount to two separate findings; and Subsection (H) is inconsistent with agency operations in that the Department requires an amendment application to be filed if a different use is contemplated other than that which is included in the ROW grant.
- **R12-5-902:** The rule is inconsistent with statute. The statute creating the Selection Board and referenced within this rule, A.R.S. 37-202, appoints the Governor, the State Treasurer, and the Attorney General to the Selection Board. This rule, however, has the Land Commissioner in place of the State Treasurer.
- **R12-5-904:** The rule is mostly consistent with statute, except for the age and residence requirements mentioned, which was removed from § 37-604(B)(1)(a).
- **R12-5-1101:** Subsection (I) is not consistent with agency operations as the Department does not age test or citizen-test its applicants; Subsection (2) is inconsistent with agency operations as the Department no longer has a "Land Division form," though it does provide application forms; Subsection (5) is inconsistent with the minimum fee charged by the Department; Subsection (10)(f) is inconsistent with agency operations because these types of signs are not permitted without application and a subsequent permit; Subsection (12)(a) is inconsistent with agency operations because it conflicts with A.A.C. R12-5-1201; Subsection (12)(b) is inconsistent with A.R.S. § 37-132; and Subsection

(16) is inconsistent with agency operations because the Department does not legalize a sign installed and maintained in trespass.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates some rules are ineffective in achieving the Department's objectives when they are inconsistent with statute and with the Department's operations as outlined above. Furthermore, the Department indicates R12-5-801 is not effective in that subsections (C)(5)(c)(iii) and (D)(8) articulate overly burdensome payment methods for customers, specifically, municipalities and other government entities.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Department indicates that the rules are enforced when not inconsistent with statute or other rules. However, if the rule is inconsistent with statute, statutes are followed. For example, rule R12-5-802, where site leases in excess of fifty (50) years are required to be advertised and sold at public auction, rather than the current rule language which states ten (10) years. If the rule is inconsistent with other rules, the newer rule is followed, such as is the case with filing fees. For example, rules indicating fees charged are superseded by fees outlined in rule R12-5-1201.

**9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there are no federal laws applicable to these rules.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Department indicates the rules reviewed pursuant to this report were adopted before July 29, 2010.

**11. Conclusion**

This 5YRR from the Department was previously considered by the Council, returned in whole, and scheduled for resubmission, which is now before the Council. As indicated above, the Department has identified rules that are not clear, concise, understandable, consistent, effective, or enforced as written. The Department indicates it intends to amend the rules to eliminate inconsistencies and redundancies and to articulate the Department's operations. The Department indicates the rules will be amended in April 2024. The Council has also previously voted, pursuant to A.R.S. § 41-1056(E), to require the Department to propose amendments to the rules in Title 12, Chapter 5, Articles 7-9 and 11 by April 30, 2024.

Council staff recommends approval of this report.

Douglas A. Ducey  
Governor



Lisa A. Atkins  
Commissioner

## Arizona State Land Department

1110 West Washington, Phoenix, AZ 85007  
(602) 542-4631

July 29, 2022

Arizona Department of Administration  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, AZ 85007

Attn: Nicole Sornsins, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review; A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, & 11

Dear Chairperson Sornsins:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, and 11. This document complies with the requirements under A.R.S. § 41-1056. The Department certifies that it is in compliance with the requirements of A.R.S. § 41-1091.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or [acalabresi@azland.gov](mailto:acalabresi@azland.gov).

Sincerely,

Paul Peterson  
Senior Administrative Counsel

Enclosures

c: Angela Calabresi, Administrative Counsel

# FIVE-YEAR RULE REVIEW REPORT

Submitted to

**THE GOVERNOR'S REGULATORY REVIEW COUNCIL**



**ARIZONA STATE LAND DEPARTMENT**

*"Serving Arizona's Schools and Public Institutions Since 1915"*

**TITLE 12 – Natural Resources  
CHAPTER 5 – State Land Department**

**Article 7 – Special Leasing Provisions**

**Article 8 – Right-of-way**

**Article 9 – Exchanges**

**Article 11 – Special Use Permits**

*Originally Submitted July 29, 2022*

*Revised and resubmitted November 1, 2023*

## **Abstract of Rules Analyses**

The Administrative Procedures Act (“APA”) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor’s Regulatory Review Council (the “Council”) for review. The Arizona State Land Department’s (the “Department”) rules are published in the Arizona Administrative Code (“A.A.C.”) Title 12, Chapter 5, Articles 1 through 25 and can be found on the Arizona Secretary of State’s website. The Department was scheduled to file a review of its rules under Title 12, Chapter 5, Articles 7, 8, 9 and 11 with the Council by the end of July 2022. The Department completed this report, which was subsequently rejected by the Council and returned to the Department. The Department has amended this report in light of the comments and concerns reflected by the Council.

The Department while not a regulatory agency, is a public agency that should ensure that the public has clear understanding and consistent guidelines for State Trust land (“STL”) transactions. The Department serves as the trustee of the State’s 9.2 million acres of STL and the appurtenant natural resources. The trust status of STL imposes obligations and constraints that would not apply if the State held the land outright. These obligations and constraints are outlined in the extensive and detailed provisions of Sections 24-30 of the State’s Enabling Act, Article X of the Arizona Constitution, statutes in A.R.S. Titles 27 (sub-surface) and 37 (surface estate), and a century of case law.

STL, managed for its highest and best use while also preserving its finite natural resources, is governed by the laws of the Enabling Act, Constitution, and judiciary of this state. The Commissioner is granted broad statutory discretion in her decision-making powers and authorities, which are necessary for the management of a perpetual trust in a time of increasing demand for all types of land uses. The Department also has a public duty to ensure that its expectations for applicants, lessees and permittees are clear and consistent. To that end, the Department is proposing amendments to some of our rules within Title 12, Chapter 5 in order to conform with changes to statutes and internal processes and to clarify language and drafting nuances where necessary.

Within this report, the Department evaluated 11 separate rules relating to Articles 7, 8, 9 and 11. Article 7 governing Special Leasing Provisions contains three rules: agricultural leases (R12-5-702), grazing leases (R12-5-703), and commercial leases (R12-5-705). Article 8 governing Right-of-way contains two rules: one pertaining to rights-of-way generally (R12-5-801) and one specifically for Reservoir, Dams, and Other Sites (R12-5-802). Article 9 governing Exchanges contains five rules pertaining to scope of rules (R12-5-901), definitions (R12-5-902), application (R12-5-904), maps and photographs (R12-5-910), and controversy as to title or leasehold rights (R12-5-918). Article 11 governing Special Use Permits (also known as Special Land Use Permits) contains one rule (R12-5-1101 Policy; Use of Lands).

### **Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A)**

Each rule required to be reviewed in this report has been analyzed according to the following factors:

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective;
12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

### **Identical Information for All the Rules**

Pursuant to A.A.C. R1-6-301(B), rules reviewed within the same report that render identical answers for any factor or factors delineated above shall have those identical answers provided only once. The rules contained in this report are identical in the following ways:

**7. Written Criticisms:**

No written criticisms of the rules reviewed herein were received in the last five years and since the last 5YRRR was submitted to GRRC.

**8. Economic impact comparison:**

There is no current EIS to compare with a previous EIS. However, specific revenues and general economic impacts of activities that are governed by these rules are included in the economic impact analysis at the end of this report.

**9. External Analysis of impact of State's business competitiveness:**

The Department has not received any external analysis of the rules' impact on Arizona's business competitive position.

**10. Previous 5yRR Report Course of Action:**

The Department previously submitted a review of the rules in Articles 7, 8, 9, & 11 in 2017 and stated, at that time, that many of the rules should be amended. The Department intended to begin that process by March 2019. The Department did not complete this course of action.

**11. Cost v. Benefit and Least Burden Analysis:**

While the rules need improvement to conform with updated Department operations, as outlined in the analyses herein, their general applicability and existence are necessary to provide transparency in their respective areas and articulate the land disposition types and programs that the Department executes.

**12. Comparison with Federal Law:**

There are no federal laws that apply to these rules.

**13. A.R.S. § 41-1037 Compliance:**

The rules reviewed herein were adopted prior to July 29, 2010, so this factor was not analyzed for § 41-1037 Compliance.

## ANALYSES OF RULES

### Article 7. Special Leasing Provisions

#### A.A.C. Rule 12-5-702 Agricultural Leases

**1. Statutory Authority:**

Enabling Act, § 28; A.R.S. §§ 37-101, 37-211, 37-281, & 37-285

**2. Objective:**

The objectives of the rule are to clarify and direct the application process for agricultural leasing and agricultural leasing requirements, including development and improvement requirements.

**3. Effectiveness:**

Some subsections of the rule are ineffective where there are inconsistencies with agency operations.

**4. Consistency:**

The rule's subsections are inconsistent in the following ways:

Subsection (B) is inconsistent with statute as the rule requires applicants to submit an application to have lands reclassified, but no such application is needed or taken if lands are to be reclassified as agricultural lands (*see* A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the Trust and of the State);

Subsection (C)(1)(a) is inconsistent with agency operations, as an applicant may currently apply to lease multiple sections of land using one application despite the restriction within the subsection (N.B. Fees are charged on a per section basis in accordance with A.A.C. R12-5-1201 despite the use of one application form.);

Subsection D is inconsistent with itself and with statute: Sub-subsections (1) and (2) may possibly conflict with each other, as (D)(1) applies a minimum of \$1.00 per acre per year while (D)(2) applies a minimum rental of \$10.00 a year to each section or portion of a section. So, for example, under (D)(1), leasing 639 acres within a single section equals \$639.00 (\$1 x 639 acres, while under (D)(2), it amounts to \$10.00 (\$10.00 per section). Further, A.R.S. § 37-132(A)(5) authorizes the Commissioner to appraise state lands for leasing; A.R.S. § 37-285(A) requires agricultural leases to have annual rents not less than the appraised rental value subject to adjustment each year, with a minimum cap of \$0.05 per acre per year; and A.R.S. § 37-282.01(G) allows the Commissioner to conduct mass

appraisals at their discretion – given market conditions, and other variable conditions that may warrant mass appraisal without a specified timeframe;

(H)(1)(a) is inconsistent with agency operations, as it requires a separate renewal application to be submitted for each section, or portion thereof, of land, whereas currently only one application form, and (H)(1)(b) is inconsistent with the filing fees delineated in A.A.C. R 12-5-1201.

**5. Enforcement policy:**

The rule is enforced when it is not inconsistent with statute or other rules. If inconsistent with statute, statutes are followed. If inconsistent with other rules, the newer rule is followed, such as is the case with filing fees.

**6. Clear, concise, and understandable:**

The rule is generally not clear, concise, and understandable because of redundancies and drafting style, specifically:

Subsection (C)(1) is consistent with yet redundant of A.R.S. § 37-281(B);

Subsection (F) is consistent with, yet redundant of, A.R.S. § 37-285; and

Subsection (H)(1) is consistent with, yet redundant of, statute.

**14. Proposed Course of Action:**

The Department intends to amend the rule to eliminate inconsistencies and redundancies and to articulate the Department's operations. This rule will be amended in April, 2024.

## A.A.C. Rule 12-5-703 Commercial Leases

**1. Statutory Authority:**

A.R.S. § 37-132

**2. Objective:**

The objectives of the rule are to direct the application process for commercial leases and to clarify commercial lease requirements and restrictions.

**3. Effectiveness:**

The rule is not entirely effective as it exhibits inconsistencies and lacks transparencies.

**4. Consistency:**

The rule is inconsistent in the following ways:

Subsection (B) is not inconsistent because it conflicts with the Department's mandate to determine the highest and best use of the land held in trust;

Subsection (D) is inconsistent with agency operations because the Department does not receive applications to petition for reclassification of lands, but rather reclassifies the lands sua sponte;

Subsection (H) is inconsistent with agency operations; and

Subsection (M) is, in part, inconsistent with agency operations and inaccurate.

**5. Enforcement policy:**

The rule is enforced where is not inconsistent with other laws, and the conditions and rights of lessees are further articulated in lease contracts.

**6. Clear, concise, and understandable:**

Subsection (A) is not concise because it is unnecessary;

Subsection (B) is not concise because the first portion is addressed in statute; and

Subsection (C) is not concise because it is redundant of the Enabling Act;

**14. Proposed Course of Action:**

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections. This rule will be amended in April, 2024.

## A.A.C. Rule 12-5-705 Grazing Leases

**1. Statutory Authority:**

A.R.S. §§ 37-132, 37-283, & 37-285

**2. Objective:**

The objectives of the rule are to clarify and direct the application process for grazing leases and to clarify grazing lease requirements and restrictions.

**3. Effectiveness:**

The rule is mostly effective in articulating grazing lease requirements. However, some subsections of the rule are ineffective where inconsistent with statute or agency operations, as noted below.

**4. Consistency:**

The rule is inconsistent in the following ways:

Subsection (B) is inconsistent with agency operations in that the Department does not impose age- or citizen-based restrictions on its applicants;

Subsection (C) is inconsistent in that: 1) it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201; 2) it requires the use of forms, i.e., Land Division forms, that no longer exist; and 3) it indicates that if a renewal applicant has an up-to-date and current statement of his holdings within the ranch unit on file with the Department then completion of detailed questions concerning holdings on the application form are not required to be filled out, when in actuality, the applicant must provide a map of the leased land including any controlling interests in conjunction with the lease at the time of the renewal of the lease;

Subsection (E) is inconsistent with statute and agency operations in that it requires applicants to apply to have lands reclassified as Grazing Lands but no such application is needed or taken if lands are to be reclassified as Grazing Lands (see A.R.S. § 37-212 which authorizes the Commissioner to reclassify lands in the best interest of the trust and of the state);

Commissioner based on the recommendation of the grazing land valuation commission (See A.R.S. § 37-285);

Subsection (G) is inconsistent with agency operations because it permits the splitting of a Grazing Lease into many leases to dissect due dates and payments of a large Grazing Lease into more palatable portions, which amounts to a hardship exception to the

common anniversary date practice which the Department follows without exception (i.e. all Grazing Lease rents are due in March);

Subsection (H) is inconsistent with agency operations because the Land Division and its corresponding forms no longer exist;

Subsection (K) is inconsistent with A.R.S. § 37-283(A) and the provisions of Department Grazing Leases;

Subsection (L) is inconsistent with agency operations, as crops may not be grown on Grazing Lands under a Grazing Lease;

Subsection (N) is inconsistent with agency operations as to the prescribed form which no longer exists, but the intent is consistent; and

Subsection (O) is partially inconsistent with agency operations, as Grazing Leases are limited to grazing purposes.

**5. Enforcement policy:**

The rule is enforced when it is not inconsistent with statute or updated agency operations.

**6. Clear, concise, and understandable:**

The rule is not clear, concise, and understandable.

Several subsections are outdated, redundant or inconsistent with statute, and conflict with the Department's standard work and lease instruments.

Some of the provisions have been incorporated into a different article.

**14. Proposed Course of Action:**

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections. This rule will be amended in April, 2024.

## **Article 8. Right-of-way**

### **A.A.C. Rule 12-5-801 Right-of-way**

**1. Statutory Authority:**

A.R.S. §§ 37-107, 37-132, 37-287 & 37-461

**2. Objective:**

The objective of this rule is to inform Right-of-way applicants of the application process and Right-of-way grantees of the uses and restrictions pertaining to Right-of-way instruments on State Land.

**3. Effectiveness:**

Some provisions of this rule are ineffective in articulating its objective, as noted below. Some of provisions are verbose and conflicting with law which reduce the effectiveness of the rule. Further, subsections (C)(5)(c)(iii) and (D)(8) articulate overly burdensome payment methods for customers, specifically, municipalities and other government entities.

**4. Consistency:**

The rule is inconsistent in the following ways:

Subsection (C)(2)(b) is inconsistent with agency operations as the agency does not require an application for each county crossed because it would be overly burdensome for the applicant and for the agency to implement;

Subsection (C)(3)(xi) is inconsistent with agency operations and conflicts with (C)(4)(a);

Subsection (C)(8)(c) is inconsistent with agency operations because the commencement date is not the date that the instrument is mailed to the applicant, as stated, but rather it is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction;

Subsection (C)(8)(c) is inconsistent with agency operations;

Subsection (D)(7)(a) is inconsistent with agency operations as the Department does not require this; and

Subsection (E)(1)(a) is inconsistent with agency operations because the Department does not require applications to place improvements for Right-of-Way grantees.

**5. Enforcement policy:**

The rule is enforced when it is not inconsistent with statutes or updated agency operations.

**6. Clear, concise, and understandable:**

The rule is not clear, concise, and understandable.

Subsections (A)(1) and (A)(2) are redundant of statute; and

Subsection (B) is not concise in that sub-subsection (1) is unnecessary and sub-subsection (2) would best be served by being relocated to subsection (C);

Subsection (C)(1)(a) is not concise in that some of the language is overly restrictive;

Much of Subsection (C)(3) is not concise or clear;

Subsection (C)(5)(a) is not clear in that it does not refer to the regulation that promulgates Department-wide fees; and

Proposed changes to subsections not mentioned above may benefit from style or language changes to aid clarity and conciseness.

**14. Proposed Course of Action:**

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent, conflicting, and redundant subsections. This rule will be amended in April, 2024.

## A.A.C. Rule 12-5-802 Reservoir Dams and Other Sites

**1. Statutory Authority:**

A.R.S. §§ 37-132 & 37-461

**2. Objective:**

The objective of this rule is to notify reservoir, dam, and other site lease applicants and lessees, as well as the public, of the Department's requirements for a reservoir, dam, and site lease application, i.e. Non-linear Rights-of-way, as well as the rights and obligations of such lessees.

**3. Effectiveness:**

The rule is effective.

**4. Consistency:**

The rule is consistent in part, yet inconsistent in the following ways:

Subsection (B) is inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction – it is fifty years;

Subsection (C) is inconsistent with agency operations, and overly burdensome to the applicant. The agency has a standardized process for notifying surface and subsurface lessees of applications in queue, thereby avoiding confrontational interactions with existing and prospective users;

Subsection (D) is partially inconsistent with agency operations, as non-use is not addressed in the way iterated, and the lease instruments don't authorize uses/purposes outside the scope/lease type;

Subsection (F) is not consistent with agency operations and within itself, as the application of it could amount to two separate findings; and

Subsection (H) is inconsistent with agency operations in that the Department requires an amendment application to be filed if a different use is contemplated other than that which is included in the ROW grant.

**5. Enforcement policy:**

The rule is enforced except as to auctions of site leases for terms over 10 years but not over 50 years.

**6. Clear, concise, and understandable:**

On the whole, the rule could benefit from general style improvements, and conformance with agency practice and contractual law. Specifically:

Subsection (D) is partially not concise, as it could be combined with subsection (C) to address initial and renewal applications at the same time;

Subsection (E) is not clear and could benefit from a redrafting; and

Subsection (I) is not clear nor concise and could benefit from redrafting.

**14. Proposed Course of Action:**

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections. The Department also intends to amend some of the provisions to provide clarity to ensure the public has clearer guidance on the agency's expectations on issuance and non-use of non-linear ROWs. This rule will be amended in April, 2024.

## **Article 9. Exchanges**

### **A.A.C. Rule 12-5-901 Scope of Rules**

- 1. Statutory Authority:**  
A.R.S. § 37-604
- 2. Objective:**  
The objective of the rule is to inform exchange applicants of the scope of this rule and succeeding rules, i.e., R12-5-902 et seq.
- 3. Effectiveness:**  
The rule is effective in that it articulates the scope of subsequent rules.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The rule would be enforced as a statement of scope of purpose for subsequent rules if and when the Department executes an exchange.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 14. Proposed Course of Action:**  
The Department does not intend to amend this rule.

## **A.A.C. Rule 12-5-902 Definitions**

- 1. Statutory Authority:**  
A.R.S. § 37-604
  
- 2. Objective:**  
The purpose of this rule is to define terms used within Article 9, Chapter 5, Title 12 of the A.A.C.
  
- 3. Effectiveness:**  
The rule is not effective.
  
- 4. Consistency:**  
The rule is inconsistent with statute. The statute creating the Selection Board and referenced within this rule, A.R.S. 37-202, appoints the Governor, the State Treasurer, and the Attorney General to the Selection Board. This rule, however, has the Land Commissioner in place of the State Treasurer.
  
- 5. Enforcement policy:**  
The rule would not be enforced if the Department executed an exchange.
  
- 6. Clear, concise, and understandable:**  
The rule is clear and understandable, but it is not concise as three definitions - Commissioner, Department, and Selection Board - are redundant of statute and one definition - private owner - does not need to be defined as a legal term of art.
  
- 14. Proposed Course of Action:**  
The Department intends to repeal this rule in a future rulemaking in April, 2024.

## **A.A.C. Rule 12-5-904 Application**

- 1. Statutory Authority:**  
A.R.S. § 37-604
- 2. Objective:**  
The purpose of this rule is to inform exchange applicants of the exchange application requirements.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is mostly consistent with statute, except for the age and residence requirements mentioned, which was removed from § 37-604(B)(1)(a).
- 5. Enforcement policy:**  
The Department would enforce the rule if presented with an exchange applicant.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 14. Proposed Course of Action:**  
The Department intends to amend this rule to incorporate R12-5-910 in a future rulemaking in April, 2024.

## **A.A.C. Rule 12-5-910 Maps and Photographs**

- 1. Statutory Authority:**  
A.R.S. § 37-604
- 2. Objective:**  
The purpose of this rule is to inform exchange applicants of map and photograph requirements.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent with statute.
- 5. Enforcement policy:**  
The Department would enforce the rule if presented with an exchange applicant.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 14. Proposed Course of Action:**  
The Department intends to repeal this rule while incorporating the information into R12-5-904 in a future rulemaking in April, 2024.

## **A.A.C. Rule 12-5-918 Controversy as to Title or Leasehold Rights**

- 1. Statutory Authority:**  
A.R.S. § 37-604
- 2. Objective:**  
The purpose of this rule is to give the Department the right to hold in suspension or reject an application for exchange of State Lands when there are title defects or conflicting interests.
- 3. Effectiveness:**  
The rule is effective.
- 4. Consistency:**  
The rule is consistent.
- 5. Enforcement policy:**  
The Department would enforce the rule if presented with an exchange applicant.
- 6. Clear, concise, and understandable:**  
The rule is clear, concise, and understandable.
- 14. Proposed Course of Action:**  
The Department does not intend to amend this rule.

## Article 11. Special Use Provisions

### A.A.C. Rule 12-5-1101 Policy; Use of Lands

**1. Statutory Authority:**

A.R.S. § 37-132

**2. Objective:**

The objective of this rule is to demarcate the role and use of Special Land Use Permits and to provide guidance to Special Land Use Permit applicants.

**3. Effectiveness:**

Though the rule attempts to achieve its stated objective and has done so successfully in the past, it is inconsistent and lacks clarity.

**4. Consistency:**

The rule itself is partially consistent. For example:

Subsection (1) is not consistent with agency operations as the Department does not age test or citizen-test its applicants;

Subsection (2) is inconsistent with agency operations as the Department no longer has a “Land Division form,” though it does provide application forms;

Subsection (5) is inconsistent with the minimum fee charged by the Department;

Subsection (10)(f) is inconsistent with agency operations because these types of signs are not permitted without application and a subsequent permit;

Subsection (12)(a) is inconsistent with agency operations because it conflicts with A.A.C. R12-5-1201;

Subsection (12)(b) is inconsistent with A.R.S. § 37-132; and

Subsection (16) is inconsistent with agency operations because the Department does not legalize a sign installed and maintained in trespass.

**5. Enforcement policy:**

The rule is enforced where it is effective.

**6. Clear, concise, and understandable:**

The rule is not clear, concise, and understandable in the following ways:

The preamble publishes policy, which is improper;

The preamble contains language which is redundant of language elsewhere within the rule;

Subsections (6) and (8) are unnecessary;

Subsection (9) is not clear not concise and should be redrafted;

Subsection (10) is partially not concise where "advertising display" is defined, and should be stricken, while the remainder of the subsection can be transferred to within subsection (9), except for (10)(f); and

Subsection (11) is unnecessary and redundant.

**14. Proposed Course of Action:**

The Department intends to amend the rule to relocate some of the provisions to the -100s and to eliminate inconsistent and redundant subsections in April, 2024.

## **ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

As of Fiscal Year 2021, the Department held: 348 Agricultural Leases covering 157,920 acres of Trust Land which generated \$4,265,005 in income; 1,196 Grazing Leases covering 8,344,576 acres which generated \$2,749,775 in income; 273 Commercial Leases covering 70,274 acres which generated \$31,888,877 in income; 7,818 Right-of-Way Grants covering 128,567 acres which generated \$9,614,946 in income; and 652 Use Permits covering 600,900 which generated \$4,419,661 in income.

The rental payments from all of the above leases are deposited into funds managed by the State Treasurer and distributed directly to the beneficiaries on a monthly basis. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provides opportunities for the labor force and businesses that supply services and goods directly, as well as support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Economic development is increased by rights-of-way that provide for the development of roads and utilities, and taxes are paid by the companies and individuals who engage in activities on Trust Land. The taxes are then utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community services.

**APPENDIX A**  
Arizona Administrative Code Rules Reviewed

Title 12, Chapter 5, Article 7 Special Leasing Provisions

    R12-5-702 Agricultural Leases

    R12-5-703 Commercial Leases

    R12-5-705 Grazing Leases

Title 12, Chapter 5, Article 8 Rights-of-Way

    R12-5-801 Rights-of-Way

    R12-5-802 Reservoir Dam and Other Sites

Title 12, Chapter 5, Article 9 Exchanges

    R12-5-901 Scope of Rules

    R12-5-902 Definitions

    R12-5-904 Application

    R12-5-910 Maps and Photographs

    R12-5-918 Controversy as to Title or Leasehold Rights

Title 12, Chapter 5, Article 11 Special Leasing Provisions

    R12-5-1101 Policy Use of Lands

[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 7. Special Leasing Provisions \(Refs & Annos\)](#)

A.A.C. R12-5-702

R12-5-702. Agricultural Leases

[Currentness](#)

**A.** Land subject to agricultural lease; term of lease

1. All state lands classified as agricultural land are subject to agricultural leasing for such term as may be established by the Commissioner but in no event for a term of more than ten years.

a. The term of an agricultural lease of undeveloped agricultural land shall not exceed two years.

**B.** Application for lease of lands not classified as agricultural. An application for an agricultural lease of lands not classified as agricultural shall be accompanied by an application for reclassification as provided by the general rules and regulations governing leasing of state lands.

**C.** Application for agricultural lease

1. Application for an agricultural lease shall be made upon the appropriate form as provided by the Department and in accordance with the general rules and regulations governing the leasing of state lands.

a. Each application shall be limited to the lands in one section or part thereof.

**D.** Rental rates; appraisal

1. No agricultural lease shall provide for a rental less than the appraised rental value of the leased land, and in no event a rental less than \$1.00 per acre per annum.

2. Minimum rental for each agricultural lease shall be \$10.00 per annum; provided, however, that the minimum rental of \$10.00 per annum shall apply to each section or portion thereof covered by the lease.

**E.** Number of leases issued on farm unit

1. Ordinarily, leases issued by the Department will combine into one lease, all contiguous and adjoining state agricultural lands within the lessee's farm unit.

a. It is recognized that such consolidation may work hardship on the lessee because of the resultant common due date of rentals.

i. A lessee thus affected and desirous of dividing his lease may make application to the Department to do so. Such application shall be in writing, setting forth the reasons therefor in such detail as to enable the Department to act with full knowledge of the circumstances.

ii. If such application is approved by the Department, division of the lease will be made in as reasonable a manner as possible, compatible with the best interests of the state.

**F. Agricultural lease form; provisions.** Agricultural leases shall be made on the appropriate form provided by the Department, and shall contain such provisions and supplemental conditions as may be prescribed by the Commissioner in accordance with the provisions of the law and Department rules and regulations.

**G. Sequence of development and improvement of lands under agricultural development lease**

1. The first allowable acts of development on the leased premises under an agricultural development lease shall include only those necessary and incident to the acquisition of a water supply adequate for the development of the leased acreage.

2. The placing of any improvement not necessary to the accomplishment of subsection (A) above shall not be approved until after the acquisition of such water supply has been accomplished or assured and in all cases only after proper application made and approval had in accordance with the provisions of the Department's rules and regulations in regard to permits to place improvements.

3. When rules and regulations promulgated by state or federal regulatory agencies would affect state lands or crops grown thereon, and when, in his opinion, the best interests of the state would be so served, the State Land Commissioner may require the lessee to conform with these regulatory practices to prevent the deterioration of the soil or crops grown thereon. If the lessee fails to comply with the requirements of the Commissioner, the Commissioner may have the required remedial work accomplished and bill the lessee the amount due the Department. Failure by the lessee to pay for such remedial work will, after the proper notice, subject the lease to forfeiture for nonpayment and noncompliance.

**H. Application for renewal; right of renewal; developmental lease**

1. Application for renewal of an agricultural lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.

a. A separate application form shall be submitted for each section of land or portion thereof within the lease.

- b. The filing fee for each application shall be the same as for an initial application.
2. A preferred right of renewal of an agricultural development lease shall not extend to a lessee who has not acquired a water supply deemed by the Commissioner to be adequate.
3. Proper diligence on the part of the lessee toward complete agricultural subjugation and development of the land under lease shall be the measure for the Commissioner's determination as to whether renewal of an agricultural development lease is in the best interests of the State.

#### I. Application to assign lease

1. Application to assign and application for assumption of lease shall be made on the appropriate form provided by the Department and in accordance with the general rules and regulations governing leasing of state lands.

- a. Upon approval of the application, the assignment will be noted on the lease and made of record in the Department.

#### Credits

Original rule, Art. III, Subchapter B, Ch. II (Supp. 76-4). Amended by emergency action effective June 20, 1990, pursuant to [A.R.S. § 41-1026](#), valid for only 90 days (Supp. 90-2). Emergency expired. Section R12-5-702 renumbered from Section R12-5-151 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-702, AZ ADC R12-5-702

[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 7. Special Leasing Provisions \(Refs & Annos\)](#)

A.A.C. R12-5-703

## R12-5-703. Commercial Leases

### Currentness

**A.** Scope of commercial leasing rules. An applicant for a commercial lease shall be subject to the general leasing rules enumerated, *supra*. Such applicant shall also be subject to the commercial leasing rules set out, *infra*. In a commercial leasing situation where the general leasing rules and the commercial leasing rules conflict, the latter rules shall be controlling.

**B.** Lands subject to commercial lease. All state lands classified as suitable for commercial purposes are subject to a commercial lease. Unless it is deemed to be for the best interests of the state, it is not the policy of the State Land Department to allow and issue commercial leases which will seriously interfere with, damage, or break up operations of an established ranch or farm unit. There is no limit to the amount of commercial land that may be leased to any one individual, corporation, partnership or association.

**C.** Term of commercial lease. State lands suitable for commercial purposes may be leased for a period of not more than ten years without advertising, or subject to such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interests of the state.

**D.** Applications to lease state lands not classified as commercial. Applications to lease lands not classified as commercial shall be accompanied by a petition for reclassification as provided by the general leasing rules.

**E.** Application for commercial lease; application for commercial lease renewal. All applications for commercial leases and all applications for renewal of commercial leases shall be made on such form or forms as may from time to time be prescribed by the Commissioner and provided by the Commissioner. A commercial lease before the time of execution or renewal will be subject to the provisions and supplemental conditions and restrictions as may be added thereto and the provisions of law and these rules.

**F.** Additional conditions for commercial leases.

1. Unless otherwise directed by the Commissioner in writing, the lessee shall:

a. Notify the Commissioner in writing as to the number of any license issued by the state Tax Commission of Arizona to the lessee, any sublessee, any concessionaire or any assignee; such notice shall also include the exact name in which license is issued.

- b. Keep and maintain an accounting system satisfactory to the Commissioner.
  
- c. Allow access to accounting records during business hours where the same are kept for the purpose of inspecting and auditing the same.
  
- d. File with the Commissioner, if requested by the Commissioner, a statement of the total gross sales made for the period specified. Unless otherwise directed by the Commissioner, this report may be made by filing with the Commissioner the requested information on the form used by the state Tax Commission.
  
- e. Acquire consent in writing from the Commissioner for any improvements made on the site.
  
- f. Acquire consent in writing for moving buildings from other premises onto the leased premises. All buildings and structures shall be of acceptable construction.
  
- g. Keep any gas, electric, power, telephone, water, sewer, cable television and other utility or service lines under ground unless prohibited by law.
  
- h. File with the Commissioner, prior to the approval of any application to place improvements, plans and specifications showing the nature, location, cost, quality of proposed material, size, area, height, color, shape and design of the proposed improvements. The Commissioner may also require a perimeter survey of the leased premises upon which shall be shown the location of the completed improvements. The lessee shall also submit grading plans.

2. The above conditions shall apply to any assignee, sublessee or concessionaire of the original lessee.

**G.** Maps required as part of application for commercial lease. The applicant shall furnish such information map of the lands to be leased as the Commissioner may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition, the Commissioner may require an aerial photograph or photographs of such lands as he may specify in a request therefor.

**H.** Minimum rental rates for commercial leases. No commercial lease shall provide for an annual rental of less than the appraised rental value of the land and in no event shall the rent be less than 5¢ per acre per annum or less than \$10.00 per annum per lease.

**I.** Division of leases. The State Land Commissioner may at any time divide a commercial lease into two or more separate leases when such division would, in the opinion of the Commissioner, facilitate administration and management of the subject lands or would result in separating one commercial use from another. The rent for the lease year in which such division is made shall be allocated to the separate leases.

**J.** Sublease of commercial lease by lessee. No commercial lessee shall sublet his lease without the written permission of the Commissioner. Approval of a sublease may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease executed in triplicate. Upon the approval by the Commissioner, two

copies of the sublease, with the Commissioner's approval and any limitation to such approval endorsed by the Commissioner thereon will be returned to the lessee, one copy thereof being retained in the files of the Department.

**K. Application to assign lease.** Application to assign and application for assumption of lease and transfer shall be made upon such forms as may from time to time be prescribed by the Commissioner; upon the approval of the application, the action taken by the Commissioner will be noted upon the lease and made of record in the Department.

**L. Use of state lands; failure to use.** No lessee or permittee shall use lands under permit or lease except for the uses and purposes specifically set forth in the lease or other such uses or purposes as may be subsequently authorized by the Commissioner in writing.

**M. Rights of commercial lessee or permittee.** All leases or permits granted by the Commissioner are only a license or permit to use the land described in the lease or permit for commercial purposes in a manner compatible with the terms of said lease or permit. The state of Arizona reserves the right to grant other leases or permits for the use of said lands or the removal of natural products therefrom.

No lessee or permittee has the authority or right to issue any person any right to the use of said land or the removal of any products therefrom, but such right to use vests solely in the Commissioner and must be granted by the Commissioner in writing.

#### **Credits**

Original rule, Art. V, Subchapter B, Ch. II (Supp. 76-4). Amended by adding subsection (N) as an emergency effective January 9, 1989, pursuant to [A.R.S. § 41-1026](#), valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 16, 1989, pursuant to [A.R.S. § 41-1026](#), valid for only 90 days (Supp. 89-2). Emergency expired. Section R12-5-703 renumbered from Section R12-5-152 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-703, AZ ADC R12-5-703

[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 7. Special Leasing Provisions \(Refs & Annos\)](#)

A.A.C. R12-5-705

## R12-5-705. Grazing Leases

### Currentness

**A. Definitions.** Unless the context otherwise requires, the words hereinafter defined shall have the following meaning when found in these rules, to wit:

1. “Grazing lands” means lands which can be used only for the ranging of animals.
2. “Carrying capacity” or “average annual carrying capacity” means the average number of animal units which can be supported by a section of grazing land with due consideration for sustained production of the forage consistent with conservative range management.
3. “A section of land” for appraisal of carrying capacity purposes means an area of land consisting of 640 acres.
4. “Animal unit” means one weaned beef animal over six months of age, or one horse, five goats, or five sheep, or the equivalent thereof.
5. “Average market price of cattle” means the average price by the hundredweight received during the calendar year under consideration by producers of cattle, exclusive of calves, in the states of Arizona, New Mexico, California, Utah, Nevada, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, as determined by the Bureau of Agricultural Economics, United States Department of Agriculture, and, if that service is not available, from such sources as the Commissioner determines best to establish said price.

**B. Qualifications to leasing grazing lands.** Any person of the age of 21 years or over, a citizen of the United States, or who has declared an intention to become a citizen of the United States, or any firm, association or corporation which has complied with the laws of the state, shall be qualified to lease state land for grazing purposes.

**C. Applications for grazing lease and renewals.** Application for a grazing lease shall be made upon Land Division form and an application for renewal thereof shall be made upon Land Division form in accordance with the general rules and regulations relating to the leasing of state lands. Only one section or subdivision thereof may be applied for on one application for an initial lease. Application for renewal of an existing lease may include an entire ranch unit or any part thereof; provided, however, the filing fees must be paid in the same manner as in the original application.

An applicant for an initial lease shall fill out the form in complete detail. An applicant for a renewal of an existing lease, if he has an up-to-date and current statement of his holdings within the ranch unit used in connection with the lands sought to be leased, will not be required to fill out in detail answers to questions concerning his holdings appearing on the applicant form.

**D. Land subject to grazing lease and term of lease.** All state lands classified as grazing lands, not under lease, are subject to grazing lease for a period of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. It is the policy of the Department not to offer open land for lease within an established ranch unit without first offering said lands to the owner or the person having control of the lands in such ranch unit. There is no limit to the amount of grazing land that may be leased to any one individual, corporation, partnership or association.

**E. Application to lease lands not classified as grazing.** Applications to lease lands not classified as grazing shall be accompanied by a petition for reclassification as provided by the general rules and regulations relating to the leasing of state lands.

**F. Rental rates of grazing land; appraisal.** No grazing lease shall provide for a rental of less than the appraised rate of the land, and in no event less than 2¢ per acre per annum, or a minimum of \$2.50 per annum per lease, said minimum of \$2.50 per annum per lease applying to one section or portion thereof.

The Commissioner shall appraise all grazing land on the basis of its annual carrying capacity. The annual rental rate for grazing land shall be the amount found by multiplying the carrying capacity of the lands by the annual rental rate per animal unit. The annual rental rate per animal unit shall be 22% of the average market price of beef for the preceding year. The annual carrying capacity is determined by a field appraisal by the Department, and the basis for said appraisal is the average carrying capacity of the land over a ten-year period. Notice of the appraised rental of the land will be contained in the annual billing statement which will be sent to the lessee by registered mail unless he has previously signified his acceptance of said carrying capacity together with the Commissioner's final decision regarding the appraised rental. Prevailing annual rental schedules will be published annually and furnished each lessee at the time of mailing the notice of appraised rental.

An appeal from any final decision of the Commissioner relating to the appraisal of lands may be taken to the Board of Appeals as provided in the general rules and regulations relating to state lands.

**G. Number of leases issued on ranch unit.** Leases issued by the Department will include all state grazing lands within the ranch unit in one lease unless a hardship results therefrom to the lessee, in which case the lessee may at his election divide the state lands in his ranch unit in not more than four separate leases in such a manner that lease rentals will not become due and payable at the same time but will be payable on an approximate quarterly or semi-annual basis. To divide a ranch unit it is necessary for the lessee to apply in writing or in person to the Department, supplying sufficient information in order that a division of the state lands in his ranch unit can be separated topographically or by an exact line. In such cases, instead of one lease covering all the state lands in a ranch unit being issued, additional leases may be issued with different dates of payment of rentals.

**H. Form of grazing lease and provisions thereof.** The form of grazing lease offered by the Department to an applicant will be on Land Division form No. A-11 and will be subject to the provisions and supplemental conditions therein contained and such other conditions as may be added thereto and the provisions of law and these rules and regulations.

**I. Rights of grazing lessee.** All grazing leases granted by the Commissioner are only a license to graze livestock and to use the land described in the lease in a manner compatible with the terms of the lease. The state of Arizona reserves the right to grant other forms of leases or permits for the use of said lands or the removal of natural products therefrom. No grazing lessee has

the authority or right to issue to any person any rights to the use of said lands or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.

**J. Sublease or pasturage agreement.** No grazing lessee shall sublet his lease, sell or lease pasturage of lands embraced in his lease without the written permission of the Commissioner. Approval of a sublease or pasturage agreement may be granted at the discretion of the Commissioner and shall be obtained by the lessee submitting for approval of the Commissioner the sublease or pasturage agreement executed in triplicate. Upon the approval by the Commissioner, two copies of the sublease or pasturage agreement, with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon, will be returned to the lessee, one copy thereof being retained in the files of the Department.

**K. Carrying capacity and application to exceed the same.** No grazing lessee, sublessee or users under a pasturage agreement shall graze, without permission of the Commissioner, in excess of 110% of the carrying capacity as previously determined by the Commissioner upon state lands under lease within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. Approval to exceed the carrying capacity may be obtained by submitting a written request therefor. The request should contain the number of head of animals the lessee, sublessee or user desires to place upon the leased lands in excess of 110% of the carrying capacity, together with a statement as to how long the additional animals will remain upon the leased lands. If the Commissioner approves said request, the lessee, sublessee or user will be notified of such approval of increase in the carrying capacity and the period granted therefor. In the event of the approval of any such excess the Commissioner shall assess and collect the rental for such excess as provided by law and these rules and regulations.

**L. Cultivation and growing of crops on grazing land.** State land under grazing lease is limited to the ranging of animals only and may be cultivated and crops grown thereon only with the approval of the Commissioner. Upon approval of the Commissioner the land may be cultivated and crops grown thereon provided such crops are forage crops in nature that are pastured by animals or, if severed from the land, are fed to animals upon the ranch unit. Under no circumstances may the lessee grow crops commercially under the provisions of a grazing lease. In the event any crops are grown with the approval of the Commissioner which will be pastured or removed from the land for use at other times of the year upon the ranch unit, the carrying capacity will be adjusted in accordance with the forage crops grown.

**M. Cutting of timber, standing trees or posts.** The lessee shall not cut or waste, nor allow to be cut or wasted, any timber or standing trees growing on the leased land without the written consent of the Commissioner, except for fuel for domestic uses or for the necessary improvements upon the land; provided, however, that nothing herein contained shall be construed to permit the cutting of saw timber for any purpose except with the written consent of the Commissioner. Posts cut primarily from cedar, mesquite and juniper trees may be used for the erection and use of improvements by the lessee upon state lands without cost, provided the written consent of the Commissioner is first obtained. Such posts may not be used on other than state lands without payment therefor. The lessee is required to file an affidavit with the Department indicating the number of posts cut, the number used for improvement of state land and the number used on other than state lands or stockpiled for future use. At the time approval to cut posts is granted by the Commissioner, the price will be determined by him, which will be comparable to the price of posts from the United States Forest Service, and the price will be payable at the time the affidavit indicating the number of posts cut is filed with the Department. The Commissioner, or his representative, upon the granting of approval to cut posts, will from time to time visit the lessee to determine the number of posts cut. The Commissioner recognizes that the removal of cedars, mesquite and juniper trees from grazing lands is a conservation measure that will maintain or increase the range carrying capacity and that the removal of these trees in most cases would benefit state lands.

In the event the lessee does not desire to purchase the trees as above provided, the Commissioner, if he deems it for the best interest of the state, may sell the same under such terms and conditions that he may require.

A purchaser other than a lessee shall not injure the lessee's surface rights and improvements or interfere with the lessee's use of the land under lease to him and may be required to file a surety bond with the Commissioner in such amount and under such conditions as to indemnify the lessee for any damage which may result due to his removal of the trees.

**N.** Application to assign lease. Applications to assign and application for assumption of lease and transfer shall be made upon Land Division form No. A-13-1 and in accordance with the general rules and regulations relating to the leasing of state lands. Upon approval of the application, the assignment of the lease will be made by the Commissioner upon the lease where indicated and made of record in the Department.

**O.** Use of state lands; failure to use. No lessee or permittee shall use lands under lease or permit to him except for grazing purposes unless authorized by the Commissioner in writing. Applications for a special use of lands under permit or lease to a lessee or permittee for purposes other than grazing shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department. Failure of any lessee or permittee to use the land for the purposes for which he holds a lease or permit, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease or permit to forfeiture or to cancellation as provided by law and these rules and regulations.

**P.** Posting to prohibit hunting and fishing on state land. State land under lease or permit may not be posted to prohibit hunting and fishing without the consent of the Arizona Game and Fish Commission.

#### **Credits**

Original rule, Art. II, Subchapter B, Ch. II (Supp. 76-4). Amended effective September 26, 1978 (Supp. 78-5). Section R12-5-705 renumbered from Section R12-5-154 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-705, AZ ADC R12-5-705

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[Article 8. Rights-of-Way \(Refs & Annos\)](#)

A.A.C. R12-5-801

## R12-5-801. Rights-of-way

### Currentness

#### A. Definitions

1. “Commissioner” means State Land Commissioner.
2. “Department” means State Land Department.
3. “Right-of-way” for the purpose of these rules means a right of use and passage over or through state land for such purpose as the Commissioner may deem necessary.
4. “Lease” means any lease on state land in existence at the time applicant applies for right-of-way, or granted thereafter for either surface or subsurface use.
5. “Patent” means a document used by the State Land Department to convey title to land.
6. “Site” means a reservoir for storage of water; a location for a dam, a power plant or an irrigation plant, and for other purposes for public uses. (Not to include workings for the removal of sand, gravel and other road materials.)

#### B. Miscellaneous rules

1. Scope. These rules and regulations are general rules implementing Article 10, Title 37-461, Arizona Revised Statutes, providing for grants of rights-of-way and sites for public purposes, and shall prevail over and supersede any existing policy or procedure of the Department to the extent that they are in conflict therewith.
2. State land subject to application. Any state-owned land shall be subject to application, provided that the proposed use does not unalterably conflict with other existing rights.

#### C. Application for right-of-way

1. Qualifications of applicant

a. Any citizen of the United States, partnership or association of citizens, or a corporation organized under the laws of the United States or any state or territory thereof, and who are authorized to transact business in the state, and any governmental agency of the state or political subdivision and municipal corporations thereof, may apply to the Department for a right-of-way on, over or through state land.

b. Application for right-of-way shall be made upon forms provided by the State Land Department.

2. Area covered by application and right-of-way. Separate application shall be made for each county crossed. Data for each section will be shown separately.

3. Information to be furnished by the applicant

a. The application for a right-of-way shall be in such form as the Commissioner may prescribe, shall be filed with the Department by the applicant or by an authorized agent for the applicant, and shall be required to furnish the Department the following information as the Commissioner may prescribe.

i. Name and address of applicant.

ii. Statement whether applicant is an individual, partnership or corporation, or governmental agency of the state or political subdivision and municipal corporation thereof.

iii. Statement of citizenship, when applicable.

iv. If a corporation:

(1) Name.

(2) State of incorporation.

(3) Arizona business address.

(4) Affirmation of authority to do business in Arizona.

v. Age and marital status, when applicable.

vi. Description, according to the public land survey of the land for which application is being made.

vii. Width of the right-of-way.

viii. The nature of the right-of-way (the right-of-way is temporary or permanent; the right-of-way requires exclusive use or to what extent; a right-of-way through a given area).

ix. A survey of the land for which application is being made showing distance and direction from a known cadastral survey point in each section.

x. Location of improvements or crops on land under application over which proposed routes of right-of-way will pass (information required in (ix) and (x) shall be conveyed by means of accurate plat or drawing accompanying the application form).

xi. The applicant shall furnish evidence from surface lessee and all other right holders in the land applied for giving consent to the new right-of-way or objection thereto.

b. This rule shall not be taken or construed to limit or restrict the authority of the Commissioner to require the applicant to furnish such additional information as the Commissioner may deem necessary.

#### 4. Rights of surface and subsurface lessees or permittees

a. The Commissioner has the right to grant rights-of-way without the consent of the surface or subsurface lessee.

b. When the applicant for a right-of-way and any existing right holder do not agree on the appraised value of damages to the right holder, the applicant for right-of-way may apply to the Commissioner to appraise the value of any improvements that may be injured or damaged. The cost of any such appraisal shall be paid by the applicant for right-of-way.

c. In cases where to utilize the right-of-way applied for, it is necessary to cut a fence belonging to the surface lessee or otherwise enter through a fence, the installation of a standard cattle guard or other facilities in accordance with such specifications as the Commissioner may prescribe, may be required by the Commissioner as a condition to the granting of the right-of-way.

#### 5. Filing application for right-of-way; fees; rejection; withdrawal

a. Each application filed with the Department shall be accompanied by a filing fee.

b. Each application filed shall first be checked for its completeness and when it meets the requirements shall be made of record in the Department.

c. Rental or other payment for each right-of-way shall be determined by the Commissioner after appraisal.

i. Rental for rights-of-way granted without public auction sale shall be determined by the Commissioner after appraisal.

ii. Rights-of-way for exclusive use or perpetual in nature (except rights-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof) shall be sold at public auction as provided under the laws for sale of state land after appraisal.

iii. Rights-of-way for governmental agencies of the state or political subdivisions and municipal corporations thereof may be granted by the Department for an indefinite period for so long as used for the purpose granted after full payment of the appraised value of the right-of-way has been made to the State Land Department.

(1) All appraisals of rights-of-way shall be established by the State Land Commissioner.

(2) The appraised value of the right-of-way shall be determined in accordance with the principles established in [A.R.S. §§ 12-1122](#) and [37-132](#).

#### 6. Right of applicant to use of land

a. The filing of an application for a right-of-way shall not confer upon the applicant any right to use the area applied for.

b. A right of entry to map and survey or for any other purpose in the area to be applied for may be obtained from the Commissioner on forms provided by the Department.

#### 7. Termination of use; abandonment

a. When a right-of-way holder has no further use of the area, he may surrender the contract to the Commissioner.

b. The Commissioner may determine that a right-of-way is abandoned when the proper showing is made that the area under right-of-way is no longer needed or used for the purpose applied for.

c. The Commissioner shall give right-of-way holder 30 days to show cause why a right-of-way should not be cancelled. If within 30 days the right-of-way holder fails to correct the defect, the Commissioner may issue an order of abandonment.

#### 8. Issuance of a right-of-way

- a. Upon the compliance by the applicant with the requirements set forth by the Commissioner, the right-of-way contract shall be issued.
  
- b. The failure of the applicant to execute and return the right-of-way contract with all monies required within 60 days from the date of mailing by the Department, the Commissioner may issue a cancellation order for non-completion of the contract.
  
- c. The date of the right-of-way contract shall commence on the date the contract is mailed by the Department to the applicant.

**D. Right-of-way**

- 1. Term of right-of-way. The term of the right-of-way shall be determined by the Department and shall be set forth on the right-of-way contract.
  
- 2. Right-of-way rentals or other payments. The rental or any other payments required for rights-of-way shall be determined by the Commissioner after appraisal.
  
- 3. Possession and right of use of right-of-way area. The right is granted for the use of the area described in the right-of-way contract subject to any existing prior rights and subject to any rights the Department shall grant hereafter.
  
- 4. Provisions of the right-of-way
  - a. Every right-of-way contract shall provide for:
    - i. Payment to the Department of the amount established by the Commissioner after determination of the true appraised value.
    - ii. The installation and construction of necessary machinery, equipment and facilities with the right of removal within 90 days after expiration or termination of the right-of-way.
    - iii. Fencing and other protective requirements deemed necessary by the Commissioner.
    - iv. That the grantee shall restore the surface of the land within the right-of-way to a reasonable condition as required by the Commissioner.
    - v. That the grantee will indemnify, hold and save grantor harmless against all loss, damage, liability, expenses, costs and charges incident to or resulting in any way from the use, condition or occupation of the land.

vi. A statement of the purpose for which the right-of-way was granted.

vii. The right of the grantee to assign the right-of-way, provided that such an assignment shall not become effective until approved in writing by the Commissioner as being in the best interests of the state and until a copy thereof is filed with the Department.

viii. The right of termination of the right-of-way by the grantee at any time during its term by giving the Commissioner 30 days notice of termination in writing, provided that the grantee is not delinquent in any payments and has complied with all conditions on the date of termination.

5. Assignment of right-of-way; sublease prohibited

a. Grantee of each right-of-way contract, if not in default of rental or other payments, and who has kept and performed all the conditions of his lease, may, with written approval of the Commissioner, assign the right-of-way.

i. Application for assignment, the assignment and the assumption of the right-of-way will be on such forms as the Commissioner may prescribe.

ii. An assignment shall not become effective unless and until it is approved by the Commissioner.

iii. The assignee shall succeed to all the rights and shall be subject to the obligations of the assignor.

iv. A sub-grant of the right-of-way contract is prohibited.

6. Right-of-way renewal. Upon application to the Commissioner, not less than 30 days, nor more than 60 days prior to the expiration of the right-of-way contract, the grantee of a right-of-way contract, if he is not delinquent in the payment of rental or of monies due the State Land Department on the date of expiration of the contract, shall have a preferred right to renew the right-of-way contract bearing even date with the expiration of the old contract.

7. Bonds

a. The Commissioner may require the grantee to post a cash deposit or surety bond to guarantee the payment of all monies due under the contract.

b. The Commissioner may require the grantee to furnish bond, in a reasonable amount, to be fixed by the Commissioner, conditioned that the grantee will guarantee restoration of the surface of the land described in the contract to a reasonable condition, upon the termination of the right-of-way contract.

c. The Commissioner may require the lessee to file with the Department a surety bond in the form, amount, and with surety approved by the Commissioner, conditioned upon prompt payment to the lessee of the surface, subsurface or otherwise of the state land covered by the right-of-way, for any loss to such owner or lessee from damage or destruction caused by the construction or use of the right-of-way, his or its agents, or employees, to grasses, forage, crops and improvements upon such land.

d. Assignment of any or all of the right-of-way contract will not relieve the assignor of his obligation as principal under the bond. Release of the assignor's obligation under bond may be effected through the posting of a replacement bond by the assignee, but then only after approval by the Commissioner and subsequent notification of the release by the Commissioner in writing to the principal and surety.

e. The Commissioner, in his discretion, may reduce or increase the principal amount of the bond.

f. Immediately after determination by the Commissioner that full discharge of the conditions of the obligations under any bond has been effected, he will, in writing, notify the principal and surety held by the bond so that it may be formally terminated.

g. Surety on the bond shall have the right to cancel the bond and be relieved of further liability after the period of notice, by giving 30 days' notice to the Department of its desire to so cancel.

i. Upon receipt of such notification, the Department will immediately notify the grantee by certified mail of the impending action by surety.

ii. Failure by the grantee to post a replacement bond before the expiration of the 30 days mentioned next above, shall constitute a default by the grantee and cause for cancellation of the right-of-way.

8. Principal payments. Each right-of-way granted to governmental agencies of the state or political subdivisions and municipal corporations thereof for exclusive use or perpetual use shall provide for payment of principal in the full amount of the appraised value as provided by the Commissioner after appraisal.

## E. Reports

### 1. Report of improvements

a. Applications for and reports of improvements placed shall be presented to the Commissioner on forms provided by the Department.

b. Grantee of every right-of-way shall submit to the Department an application to place any improvement to be placed on the right-of-way and shall secure written approval from the Commissioner to place the improvement before any work is commenced toward the improvement.

c. The grantee shall report any completed improvements to the Commissioner and secure approval from the Commissioner.

**Credits**

Original rule, Art. VIII, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-801 renumbered from Section R12-5-165 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-801, AZ ADC R12-5-801

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A.A.C. R12-5-802

## R12-5-802. Reservoir, Dam, and Other Sites

### Currentness

#### A. Definitions

1. “Site lease” shall mean a lease issued upon state lands by the Department for reservoir or dam sites primarily used for purposes other than stock watering on lands leased for grazing purposes, and power or irrigation plant sites requiring more width than general rights-of-way leases for transmission lines or canals, or for such other purposes not classified as commercial.
2. “Surface lessee” means the holder of a lease on the surface of any state land for grazing, agricultural, commercial, homesite or natural products.
3. “Subsurface lessee” means the holder of a lease on the subsurface of any state land for oil and gas, mineral or natural products.

**B.** Land subject to site lease and term of lease. All state lands are subject to site lease for a term of not more than ten years without advertising, or for such lesser term as may be established by the Commissioner if he deems such lesser term to be to the best interests of the state. Site leases in excess of ten years are required by law to be advertised and sold at public auction to the highest bidder.

No lease for a site will be granted where damage or injury to improvements owned by a surface or subsurface leaseholder would result from the granting of the site by the Department without giving rise to a cause of action by the owner of said improvements, unless compensation for the value or damage or injury to said improvements has first been determined and a settlement made.

**C.** Application for site lease. An application for a site lease shall be made upon Land Division form No. A-82, and in accordance with the general rules and regulations relating to the leasing of state lands.

The application shall be accompanied by a map showing in detail the survey of the site applied for, or, if not surveyed, a map of reasonable accuracy so that the site may be located upon the land itself by either a survey or protraction. The Commissioner reserves the right to require a survey to be made by a regularly licensed registered engineer or land surveyor at any time. The map need be of no particular scale but should be of sufficiently large enough scale that improvements upon the surface of the land applied for may be shown. The map is considered a part of the application to lease as a line of definite location which will bind the applicant in the same manner as the lease application itself to the statements made therein.

An application for a site lease over or across state lands, the surface or subsurface of which is leased and in use, should be accompanied by a statement from such surface or subsurface lessee that he has no objection to the granting of the site lease, or, if such consent cannot be obtained, a statement from the applicant stating the reasons why such consent has not been obtained.

**D. Renewal application for site lease.** Application for renewal of a site lease shall be made upon Land Division form No. A-13-3 and in accordance with the general rules and regulations relating to state lands.

If the applicant has not used the land for the purpose for which the initial lease was granted to him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and the rules and regulations of the Department.

**E. Rights of surface and subsurface lessees.** Under the law the Commissioner has the right to grant sites without the consent of the surface or subsurface lessee. However, in many instances the surface or subsurface lessee owns improvements upon the lands desired for a site lease and these improvements are protected by law. In the event the site applicant and the surface or subsurface lessee are unable to arrive at the value of any improvements which may be injured or damaged by the grant of a site lease and the consent of the surface or subsurface lessee cannot be secured, the Commissioner may, if it is to the best interest of the state, appraise the improvements as provided by law and grant the lease upon evidence of tender to the owner of improvements of the appraised value of the same. The owner of the improvements may appeal from the appraisal of the improvements to the Appeal Board of the Department as authorized by law and these rules and regulations.

**F. Rental.** No site lease shall provide for an annual rental of less than the appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per lease.

**G. Form of site lease and provisions thereof.** The form of site lease offered by the Department to an applicant will be on Land Division form No. A-83 and will be subject to the provisions and supplemental conditions therein contained, and such other conditions as may be added thereto, and the provisions of law and these rules and regulations.

**H. Effect of a site lease.** No lessee shall use lands under lease to him except for site purposes unless authorized by the Commissioner in writing.

Applications for a special use of lands under lease to a lessee for purposes other than which the lease was issued shall be made in writing in triplicate and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications to lease. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the lessee, one copy thereof being retained in the files of the Department.

Failure of any lessee to use the land for the purposes for which he holds a lease, without having been authorized so to do by the Commissioner in writing, may, in the discretion of the Commissioner, subject said lease to forfeiture or to cancellation as provided by law and these rules and regulations.

**I. Rights of site lessee.** All leases granted by the Commissioner are only a license to use the land described in the lease for site purposes in a manner compatible with the terms of said lease. The state reserves the right to grant other leases for the use of said lands or the renewal of natural products therefrom. No site lessee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.

**Credits**

Original rule, Art. X, Subchapter B, Ch. II (Supp. 76-4). Section R12-5-802 renumbered from Section R12-5-166 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

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A.A.C. R12-5-901

## R12-5-901. Scope of Rules

### Currentness

These rules apply only to exchange of state land under the provisions of [A.R.S. §§ 37-604 to 37-608](#), inclusive, and shall prevail over and supersede any existing policy or procedure to the extent that they are in conflict therewith.

### **Credits**

No original number assigned (Supp. 76-4). Section R12-5-901 renumbered from Section R12-5-179 (Supp. 93-3). R12-5-901 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-901 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

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A.A.C. R12-5-902

R12-5-902. Definitions

[Currentness](#)

Unless the context otherwise requires:

1. “Commissioner” means the State Land Commissioner.
2. “Selection board” means that board composed of the Governor, the State Land Commissioner and the Attorney General, as authorized by [A.R.S. § 37-202](#).
3. “Private owner” means any individual person, firm, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, but does not include the government of the state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
4. “Department” means the State Land Department.

**Credits**

No original number assigned (Supp. 76-4). Section R12-5-902 renumbered from Section R12-5-180 (Supp. 93-3). R12-5-902 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-902 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

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A.A.C. R12-5-904

## R12-5-904. Application

### Currentness

The application shall be prepared and filed on such forms as the Department may from time to time prescribe. The application shall set forth such information as is required by law and these rules, including but not limited to the following: the name, age, and residence of the applicant; a description of all lands sought to be exchanged, which description shall be technically competent, definite, susceptible of only one interpretation, and furnish sufficient information for the identification of the land on the ground; the number of acres contained in the lands of applicant offered in exchange, and applicant's estimated value thereof; the number of acres contained in the state lands applied for in exchange, and applicant's estimated value thereof; a list of permanent improvements on the lands to be exchanged, applicant's estimated value thereof and the description of the location thereof in such manner as to facilitate the location thereof on the ground; a description of any leasehold interest in the land to be exchanged or ownership of any improvements thereon, together with the name and address of any such claimant; accompanying agreements, if any, with the lease-holder or owner of improvements on the lands to be exchanged shall be attached to the application and filed therewith.

### **Credits**

No original number assigned (Supp. 76-4). Section R12-5-904 renumbered from Section R12-5-182 (Supp. 93-3). R12-5-904 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-904 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

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A.A.C. R12-5-910

## R12-5-910. Maps and Photographs

### Currentness

The applicant shall furnish such map or maps of the lands to be exchanged, coded as to ownership in a suitable manner, as the Department may require and deem necessary to evaluate the application and assist in making an appraisal; and, in addition the Department may require an aerial photograph or photographs of such lands as it may specify in a request therefor.

### **Credits**

No original number assigned (Supp. 76-4). Section R12-5-910 renumbered from Section R12-5-188 (Supp. 93-3). R12-5-910 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-910 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

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[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 9. Exchanges \(Refs & Annos\)](#)

A.A.C. R12-5-918

## R12-5-918. Controversy as to Title or Leasehold Rights

### Currentness

The Commissioner may in his discretion hold in suspension or reject any application to exchange where it is found that title or leasehold rights in any of the land conveyed thereby are in controversy. The Department will not become a party to any controversy between different claimants to any of the land sought to be exchanged.

### **Credits**

No original number assigned (Supp. 76-4). Section R12-5-918 renumbered from Section R12-5-196 (Supp. 93-3) R12-5-918 repealed by summary action with an interim effective date of July 19, 1996; filed in the Office of the Secretary of State June 27, 1996 (Supp. 96-2). The proposed summary action repealing R12-5-918 was remanded by the Governor's Regulatory Review Council (September 10, 1996) which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 98-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-918, AZ ADC R12-5-918

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[Arizona Administrative Code](#)  
[Title 12. Natural Resources](#)  
[Chapter 5. State Land Department \(Refs & Annos\)](#)  
[Article 11. Special Use Permits \(Refs & Annos\)](#)

A.A.C. R12-5-1101

## R12-5-1101. Policy; Use of Lands

### Currentness

It is the policy of the Commissioner in the administration of state lands to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by existing law or the rules and regulations of the Land Division and the leasing of state lands. Permits for such special use will not be issued, however, in any case where the provisions of existing state land laws may be invoked.

The contemplated use must not be in conflict with any federal or state laws.

An applicant must state in his application the use to which he intends to put the lands and he will not be permitted to devote them to any other use unless he secures an additional permit.

1. Qualifications of applicants. Any person of the age of 21 years or over, a citizen of the United States or who has declared an intention to become a citizen of the United States or any firm, association or corporation which has complied with the laws of the state, shall be qualified to apply for a special use permit.

2. Application for special use permit; renewal thereof; application fee. An application for general special use permit shall be made on Land Division form. Such application shall describe with particularity the land applied for, and shall state in detail the use to which the applicant intends to put the lands and the period for such use.

A renewal of a general special use permit shall be made on Land Division form.

If an applicant for renewal of a special use permit has not used the land for the purpose for which the initial permit was granted him, he must state in detail reasons therefor unless he has obtained from the Commissioner authorization in writing for such non-use as required by law and these rules and regulations.

3. Form of special use permit. The form of a general special use permit will be prepared by the Department and will be subject to the provisions and supplemental conditions therein contained and the provisions of law and these rules and regulations.

4. Term of permit. A special use permit shall not be issued for a period to exceed ten years or such lesser term as may be established by the Commissioner if he deems such lesser term to be in the best interest of the state. An application for an initial special use permit shall not be approved for a period of longer than two years. Unless it is deemed to be for the best interest of the state, it is not the policy of the Department to allow and issue a special use permit which will seriously

interfere with the operations of an established lessee or permittee holding a lease or permit from the Department to the surface or subsurface rights to the land.

5. Minimum fee. No special use permit shall provide for an annual fee for less than appraised rental value of the land and in no event for less than 5¢ per acre per annum or a minimum of \$10.00 per annum per permit.

6. Failure to use land for purposes authorized. Any permittee who shall fail to use the land for the purpose for which he holds a permit during the term of his permit, unless for good cause such failure has been authorized or ratified by the Commissioner in writing, may subject his permit to forfeiture or cancellation as provided by law and these rules and regulations.

7. Rights of permittee. All permits granted by the Commissioner are only a license or permit for the use of the land described in the permit for the purpose for which the permit is issued and in a manner compatible with the terms of said permit. The Commissioner reserves the right to grant other permits for the use of said lands for the removal of natural products therefrom. No permittee has the authority or right to issue to any person any right to the use of said land or the removal of any products therefrom, but such right of use vests solely in the Commissioner and must be granted by the Commissioner in writing.

8. Use of state lands. No permittee shall use lands under permit to him except for the purpose for which the permit is issued, unless authorized by the Commissioner in writing.

Applications for a special use of lands under permit to a permittee for purposes other than which the permit was issued shall be made in writing in triplicate, and shall state in detail the reasons for such use. The application shall be signed and verified as provided for in applications for permit. Upon approval of the application by the Commissioner, two copies of the application with the Commissioner's approval and any limitations to such approval endorsed by the Commissioner thereon will be returned by the Commissioner to the permittee, one copy thereof being retained in the files of the Department. Failure of any permittee to use the land for the purposes for which he holds a permit, without having been authorized to do so by the Commissioner in writing, may, in the discretion of the Commissioner, subject said permit to forfeiture or to the cancellation as provided by law and these rules and regulations.

9. Advertising displays on state lands without permits unauthorized. The erection or maintenance on state lands of advertising displays, without permission, is unauthorized by law. Any person erecting or maintaining one or more advertising displays on state lands, except under authority of a permit issued by the Commissioner as hereinafter provided, shall be deemed a trespasser.

10. Advertising displays defined. The words "advertising displays" as used in this Article shall include structures of any kind with or without lighting effects erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever, including statuary, may be placed for advertising purposes but shall not include:

- a. Official notices or advertisements posted by or under the direction of any public or court officer in the performance of his official duties;

b. Danger, precautionary and information signs erected by officials of the Federal Government or officials of the state or any subdivision thereof, or any non-profit organization in the state, relating to the premises, or warning of the conditions of travel on a highway, or of forest fires, or road symbols, or speed limits, and including all civil defense directional signs;

c. Highway markers or signs relating to any city, town, village or historic place or shrine;

d. Notice of any railroad, bridge, ferry, or other transportation or transmission company necessary for the direction or safety of the public;

e. Official signs, notices or symbols for the information of aviators, as to location, direction or landings, and conditions affecting safety in aviation;

f. Signs containing 16 square feet or less bearing an announcement of any town, village or city, or non-profit association, or chamber of commerce, advertising itself, or local industries, buildings, meetings, or attractions, but not advertising any particular individual or corporation engaged in business for a profit; providing not more than one sign bearing the same or similar announcement shall be placed on any one approach to the city or village involved;

g. Signs erected by Red Cross authorities relating to Red Cross Emergency Station.

11. Applications for advertising display permits. Applications for permits must be executed upon Land Division form No. A-73-3. Each application must contain a sufficient recital of the facts relative to the advertising display, including its size and lighting effect, if any, to enable its substantial production from the description. A sketch showing the location on which the display is to be placed with respect to adjacent physical features should be furnished. The application should identify the highway or other medium of travel along which it is proposed to erect the display and should give the distance and direction of the site, measured by highway travel, to the nearest cities or towns. If the land on which it is desired to place the display has been surveyed, its description should be given in terms of the public land surveys.

12. Fees and rentals for advertising display permits

a. A fee of \$1.00 must accompany each application for an advertising display permit.

b. The initial and annual charges for advertising displays shall be as follows: not less than 10¢ per annum for each square foot of sign surface and not less than \$2.50 per annum for each display. The amount of the charge, subject to such minima, will be fixed by the Commissioner, which in no event will be less than the appraised rental value for such use.

c. Due consideration will be given in fixing the amounts to all pertinent facts and circumstances, including the charges made for corresponding privileges on privately owned lands similarly situated.

d. When conflicting applications are filed, due consideration will be given to the showing of each applicant and such action will be taken as is deemed to be warranted by the facts and circumstances.

13. Form of advertising display permit and terms. Special use permits to erect and maintain advertising displays on state lands may be issued by or under authority of the Commissioner on forms provided by the Department, or, in his discretion, will be issued on Land Division form and will be subject to the provisions and supplemental conditions therein contained and to such other conditions as may be added thereto, and the provisions of law and these rules and regulations. The term thereof shall be for periods of not exceeding ten years and the permits will be revocable in the discretion of the Commissioner at any time.

14. Renewal of advertising display permits. An advertising display permit issued pursuant to these rules and regulations may be renewed, in the discretion of the Commissioner, upon the filing of an application for renewal not more than 60 nor less than 30 days prior to its expiration.

15. Identification of authorized advertising displays. Each advertising display erected or maintained under a permit issued pursuant to these rules and regulations shall, for convenient identification, have the serial number of such permit marked or painted thereon.

16. Unauthorized advertising displays

a. Persons who heretofore have erected advertising displays on state lands must either obtain permits to continue such displays, if authorized by these rules and regulations, or must remove the displays as promptly as possible.

b. Where an unauthorized advertising display on state land is found, the Commissioner will take appropriate steps to secure its removal, unless the owner obtains a permit. The owner, if known, will be given notice in writing of the requirements. Displays erected without permission prior to January 1, 1953, must be removed within three months from and after the date of the approval of these rules and regulations, unless application for a permit is made within that period. Displays erected prior to January 1, 1953, for which applications for permits are made but for which permits are refused, and unauthorized displays thereafter erected must be removed within such reasonable time as may be fixed by the Commissioner. If the owner fails to remove the display within the time allowed, it may be removed by the Commissioner and the owner will be held liable to the Department for expenses incurred in removing it. If the owner is unknown, or cannot be found, the display may be removed by the Commissioner without notice. A registered letter addressed to the owner at his last known place of residence, if returned unclaimed, will be considered sufficient service of notice.

17. Restrictions on advertising displays

a. No advertising display shall be permitted which, in the opinion of the Commissioner, would mar the landscape, hide road intersections or crossing, or which, in his opinion, is otherwise objectionable.

b. No advertising display shall be affixed to, or painted on any tree or rock situate on state lands or on any other natural object on such lands.

c. All advertising displays shall conform to the applicable state laws and local ordinances or regulations.

**Credits**

Original rule, Art. XI, Subchapter B, Ch. II (Supp. 76-4). Emergency amendment filed September 26, 1990, adopted effective September 27, 1990, pursuant to [A.R.S. 41-1026](#), valid for only 90 days (Supp. 90-3). Emergency expired. Section R12-5-1101 renumbered from Section R12-5-241 (Supp. 93-3).

Current through rules published in Arizona Administrative Register Volume 28, Issue 26, July 1, 2022. Some sections may be more current. See credits for details.

A.A.C. R12-5-1101, AZ ADC R12-5-1101

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**APPENDIX B**  
Authorities ad Related Statutes

Arizona-New Mexico Enabling Act §28

A.R.S § 37-101

A.R.S § 37-107

A.R.S § 37-132

A.R.S § 37-211

A.R.S § 37-281

A.R.S § 37-283

A.R.S § 37-285

A.R.S § 37-287

A.R.S § 37-461

A.R.S § 37-604

A.R.S., Enab. Act, Sec. 28

Sec. 28.

[Currentness](#)

**Sec. 28.** That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said Territory, are hereby expressly transferred and confirmed to the said state, shall be by the said state held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same. The trust funds (including all interest, dividends, other income, and appreciation in the market value of assets of the funds) shall be prudently invested on a total rate of return basis. Distributions from the trust funds shall be made as provided in [article 10, Section 7 of the Constitution of the state of Arizona](#). As amended Dec. 7, 1999, H.R. 747, 113 Stat. 1682.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust, except that amounts in the Miners' Hospital Endowment Fund may be used for the benefit of the Arizona Pioneers' Home. As amended Dec. 7, 1999, H.R. 747, 113 Stat. 1682.

No mortgage or other encumbrance of the said lands, or any part thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of the lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication provided for sales and leases of the lands themselves. Nothing herein contained shall prevent: (1) the leasing of any of the lands referred to in this section, in such manner as the legislature of the state of Arizona may prescribe, for grazing, agricultural, commercial, and domestic purposes, for a term of ten years or less; (2) the leasing of any of said lands, in such manner as the legislature of the state of Arizona may prescribe, whether or not also leased for grazing and agricultural purposes, for mineral purposes, other than for the exploration, development, and production of oil, gas, and other hydrocarbon substances, for a term of twenty years or less; (3) the leasing of any said lands, whether or not also leased for other purposes, for the exploration, development, and production of oil, gas and other hydrocarbon substances on, in, or under lands for an initial term of twenty years or less and as long thereafter as oil, gas, or other hydrocarbon substance may be produced therefrom in paying quantities, the leases to be made in any manner, with or without advertisement, bidding, or appraisalment, and under such terms and provisions as the legislature of the state of Arizona may prescribe, the terms and provisions to include a reservation of a royalty to said state of not less than 12 ½ per centum of production; or (4) the legislature of the state of Arizona from providing by proper laws of the protection of lessees of said lands, whereby such lessees shall be protected in their rights to their improvements (including water rights) in such manner that in case of lease or sale of said lands to other parties the former lessee shall be paid by the succeeding lessee or purchaser the value of such improvements and rights placed thereon by such lessee. As amended June 5, 1936, c. 517, 49 Stat. 1477; June 2, 1951, c. 120, 65 Stat. 51.

All lands, leaseholds, timber and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid. As amended June 5, 1936, c. 517, 49 Stat. 1477.

No lands shall be sold for less than their appraised value, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre: *Provided*, that said state, at the request of the secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such government project. And other lands in lieu thereof are hereby granted to said state, to be selected from lands of the character named and in the manner prescribed in section twenty-four of this act. As amended June 5, 1936, c. 517, 49 Stat. 1477.

The state of Arizona is authorized to exchange any lands owned by it for other lands, public or private, under such regulations as the legislature thereof may prescribe: *Provided*, That such exchanges involving public lands may be made only as authorized by Acts of Congress and regulations thereunder. Added June 5, 1936, c. 517, 49 Stat. 1477.

There is hereby reserved to the United States and excepted from the operation of any and all grants made or confirmed by this act to said proposed state all land actually or prospectively valuable for the development of water power or power for hydro-electric use or transmission and which shall be ascertained and designated by the secretary of the Interior within five years after the proclamation of the President declaring the admission of the state; and no land so reserved and excepted shall be subject to any disposition whatsoever of said state, and any conveyance or transfer of such land by said state or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants there be, and is hereby, granted to the proposed state an equal quantity of land to be selected from land of the character named and in the manner prescribed in section twenty-four of this act.

Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provisions of the constitution or laws of the said state to the contrary notwithstanding. It shall be the duty of the Attorney General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this act.

#### [Notes of Decisions \(76\)](#)

A. R. S., Enab. Act, Sec. 28, AZ ST, ENABLING ACT, Sec. 28

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)  
[Article 1. State Land Department \(Refs & Annos\)](#)

A.R.S. § 37-101

§ 37-101. Definitions

Effective: August 2, 2012

[Currentness](#)

In this title, unless the context otherwise requires:

1. “Agricultural lands” means lands which are used or can be used principally for:
  - (a) Raising crops, fruits, grains and similar farm products.
  - (b) Algaculture. For the purposes of this subdivision “algaculture” means the controlled propagation, growth and harvest of algae.
2. “Amortized value” means the value for improvements established pursuant to [§ 37-281.02, subsection G](#).
3. “Commercial lands” means lands which can be used principally for business, institutional, religious, charitable, governmental or recreational purposes, or any general purpose other than agricultural, grazing, mining, oil, homesite or rights-of-way.
4. “Commissioner” means the state land commissioner.
5. “Community identity package” means a design theme including such elements as architecture, landscape, lighting, street furniture, walls and signage.
6. “Department” means the state land department.
7. “Grazing lands” means lands which can be used only for the ranging of livestock.
8. “Holding lease” means a commercial lease issued solely to grant a limited use leasehold interest in state land in anticipation of future development.
9. “Homesite lands” means lands which are suitable for residential purposes.

10. “Improvements” means anything permanent in character which is the result of labor or capital expended by the lessee or his predecessors in interest on state land in its reclamation or development, and the appropriation of water thereon, and which has enhanced the value of the land.

11. “Infrastructure” means facilities or amenities, such as streets, utilities, landscaping and open space, which are constructed or located on state lands and which are intended to benefit more than the land on which they are immediately located by enhancing the development potential and value of the state lands impacted by the facility or amenities.

12. “Leapfrog development” means the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped areas that are scheduled for development at a later time, according to the plans of the local governing body having jurisdiction for the area and which is responsible for the provision of these facilities and services.

13. “Leased school or university land” means school or university land for which a lease has been issued by the state, or the territory of Arizona, under which the lessee retains rights.

14. “Master developer” means a person who assumes, as a condition of a land disposition, the responsibilities prescribed by the department for infrastructure or community identity package amenities, or both, or for implementing a development plan containing a master plan area.

15. “Participation contract” means a contract arising out of a sale together with other rights and obligations in trust lands whereby the department receives a share of the revenues generated by subsequent sales or leases.

16. “Section of land” means an area of land consisting of six hundred forty acres.

17. “State lands” means any land owned or held in trust, or otherwise, by the state, including leased school or university land.

18. “Sublease” means an agreement in which the lessee relinquishes control of the leased land to another party for the purposes authorized in the lease.

19. “Urban lands” means any state lands which are adjoining existing commercially or homesite developed lands and which are either:

(a) Within the corporate boundaries of a city or town.

(b) Adjacent to the corporate boundaries of a city or town.

(c) Lands for which the designation as urban lands is requested pursuant to [§ 37-331.01](#).

20. “Urban sprawl” means the development of lands in a manner requiring the extension of public facilities and services on the periphery of an existing urbanized area where such extension is not provided for in the existing plans of the local governing body having the responsibility for the provision of these facilities and services to the lands in question.

**Credits**

Amended by Laws 1979, Ch. 207, § 1; Laws 1981, 1st S.S., Ch. 1, § 2; Laws 1982, Ch. 189, § 1, eff. April 22, 1982; [Laws 1989, Ch. 229, § 1](#); [Laws 1990, Ch. 24, § 1](#); [Laws 1990, Ch. 25, § 2](#); [Laws 1990, Ch. 77, § 2](#); [Laws 1992, Ch. 73, § 1](#); [Laws 1994, Ch. 171, § 1](#); [Laws 1996, Ch. 121, § 1](#); [Laws 1996, Ch. 133, § 1](#); [Laws 1998, Ch. 184, § 1, eff. May 28, 1998](#); [Laws 2012, Ch. 202, § 1](#).

[Notes of Decisions \(21\)](#)

A. R. S. § 37-101, AZ ST § 37-101

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

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[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)

[Article 1. State Land Department \(Refs & Annos\)](#)

A.R.S. § 37-107

§ 37-107. Fees; accounts

Effective: July 29, 2010

[Currentness](#)

**A.** The commissioner shall prescribe by rule application, permit, transaction, appraisal, service, filing and document fees for transactions related to the selling, leasing, annexation, conveyance, exchange, right-of-way and use of state lands or products of state lands managed by the department. Before adopting any rule setting or changing a fee under this section, the commissioner must submit the proposed fee amount to the joint legislative budget committee for review. The commissioner shall deposit the revenues derived from the fees in the trust land management fund pursuant to [§ 37-527](#).

**B.** The commissioner may establish selling and administrative fees, which may include:

1. Up to three per cent of the consideration paid for all lands and improvements sold or long-term leased.
2. Zoning application fees paid by the department to rezone land.
3. Legal advertising expenses required by law and paid by the department.

**C.** The revenues derived from the fees established pursuant to subsection B of this section shall be deposited as follows:

1. The revenues derived from the fees collected pursuant to subsection B, paragraph 1 of this section, less any amounts paid as brokerage fees pursuant to [§ 37-132, subsection B](#), paragraph 2, shall be deposited in the trust land management fund pursuant to [§ 37-527](#).
2. The monies collected pursuant to subsection B, paragraph 2 of this section as actual costs of zoning application fees paid by the department to rezone lands shall be deposited in a separate account of the state land department fund designated as the zoning application fee account. Monies in the account shall be used to pay zoning application fees if developing lands require rezoning by the jurisdiction in which the lands are located. The commissioner shall administer the account.
3. The monies collected under subsection B, paragraph 3 of this section, subsection D of this section and application evaluation and processing costs pursuant to [§ 37-205, subsection A](#) shall be deposited in separate accounts of the state land department fund to be used to pay costs of legal advertising, costs of appraisals required by the enabling act, by the Constitution of Arizona or by statute and the costs of evaluating and processing applications. The commissioner shall administer the accounts. On notice

from the commissioner, the state treasurer shall invest and divest monies in the state land department fund as provided by [§ 35-313](#), and monies earned from investment shall be credited to the fund.

**D.** The commissioner may require or allow prepayment for the estimated cost of an appraisal required pursuant to [§ 27-234](#) and this title. The commissioner shall deposit and administer prepayment monies as provided by subsection C, paragraph 3 of this section. The commissioner shall use monies accepted pursuant to this subsection to conduct contract appraisals. If an auction is held and an applicant who has prepaid the estimated cost of an appraisal or paid an appraisal fee is not the successful bidder, the successful bidder shall reimburse the applicant either for the actual cost of the appraisal or for the appraisal fee, whichever was paid. If the commissioner proceeds to auction on the commissioner's initiative, the successful bidder at auction shall reimburse the department for the actual cost of the appraisal, if there was a contract appraisal, or pay the appraisal fee if a contract appraisal was not obtained. Nothing in this subsection:

1. Requires the commissioner to offer any land at auction or for lease.
2. Requires the commissioner to reimburse an applicant if the land is not auctioned or leased.
3. Affects the status of any other application pending an appraisal.

**E.** Except as provided under [§ 37-205](#), fees paid under this section are not refundable to the applicant, regardless of the outcome of the application.

#### **Credits**

Added by [Laws 2010, Ch. 243, § 3](#).

A. R. S. § 37-107, AZ ST § 37-107

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by [2022 Ariz. Legis. Serv. Ch. 14 \(S.B. 1238\) \(WEST\)](#).

[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)

[Article 2. State Land Commissioner](#)

A.R.S. § 37-132

§ 37-132. Powers and duties

Effective: September 29, 2012

[Currentness](#)

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to [§ 37-202](#).
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10<sup>1</sup> and, except as provided in [§ 41-1092.08, subsection H](#), are subject to judicial review pursuant to title 12, chapter 7, article 6.<sup>2</sup>
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.

8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4<sup>3</sup> and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to [§ 38-611](#).

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

**B.** The commissioner may:

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under [§ 37-107, subsection B](#), paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20<sup>4</sup> and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to [§ 37-107](#).

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to [§ 9-461.06](#) or [11-805](#).

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to [§ 37-312](#).

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

#### **Credits**

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; [Laws 1989, Ch. 171, § 1](#); [Laws 1992, Ch. 190, § 1](#); [Laws 1992, Ch. 357, § 1](#); [Laws 1993, Ch. 169, § 3, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 3](#); [Laws 1997, Ch. 221, § 167](#); [Laws 1997, Ch. 249, § 1](#); [Laws 1999, Ch. 209, § 1](#); [Laws 2000, Ch. 10, § 1](#); [Laws 2000, Ch. 113, § 158](#); [Laws 2002, Ch. 336, § 2](#); [Laws 2003, Ch. 69, § 2](#); [Laws 2010, Ch. 243, § 6](#); [Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011](#); [Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011](#); [Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012](#).

[Notes of Decisions \(40\)](#)

Footnotes

[1](#) Section 41-1092 et seq.

[2](#) Section 12-901 et seq.

[3](#) Section 41-741 et seq.

[4](#) Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

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[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 2. Investigation, Classification and Appraisal \(Refs & Annos\)](#)

A.R.S. § 37-211

§ 37-211. Investigations of and experiments on state lands to determine possible uses; reclassification

[Currentness](#)

A. The state land commissioner may conduct investigations and experiments on the lands of the state to:

1. Determine which are suitable for agricultural purposes, or which may be suitable therefor by the development of water and otherwise.
2. Determine which are useful for grazing purposes only.
3. Ascertain the requirements of lands susceptible of agricultural development and the method or means best adapted to insure the development.
4. Determine which trust lands are suitable for conservation purposes pursuant to article 4.2 of this chapter.<sup>1</sup>
5. Obtain other information and data which will aid in the leasing, sale and administration of lands belonging to the state.

B. If in the investigation the commissioner determines that lands have been erroneously classified, the classification shall be changed.

**Credits**

Amended by [Laws 1996, Ch. 347, § 2.](#)

Footnotes

<sup>1</sup> Section 37-311 et seq.

A. R. S. § 37-211, AZ ST § 37-211

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[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 4. Lease of State Lands \(Refs & Annos\)](#)

A.R.S. § 37-281

§ 37-281. Lease of state lands for certain purposes without advertising; terms and conditions

[Currentness](#)

**A.** All state lands are subject to lease as provided in this article for a term of not more than ten years for agricultural, commercial and homesite purposes, without advertising. The leases shall be granted according to the constitution, the law and the rules of the state land department.

**B.** No lease shall be granted as provided by this section without application. All applications for leases shall be made upon forms prepared and furnished by the department, shall be signed and sworn to by the applicant or his authorized agent or attorney and shall be filed with the department. In lieu of signing and swearing to the application before a notary public or other person authorized to take acknowledgments, the applicant may affix his signature to the application, accompanied by a certification, under penalty of perjury, that the information and statements made in the application are to the best of his knowledge and belief true, correct and complete, and the application shall be accepted as duly executed.

**C.** Any material false statement or concealment of facts made by an applicant, his authorized agent or his attorney in the application to lease, which, if known to the department, would have prevented issuance of the lease in the form or to the person issued, shall be grounds for cancellation of a lease issued upon such application.

**D.** No lessee shall use lands leased to him except for the purpose for which the lands are leased.

**E.** No lessee shall sublease lands leased to him without written permission of the state land department.

**Credits**

Amended by Laws 1960, Ch. 83, § 1; [Laws 1993, Ch. 168, § 6, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 5](#); [Laws 1997, Ch. 249, § 5](#); [Laws 1998, Ch. 184, § 2, eff. May 28, 1998](#).

[Notes of Decisions \(37\)](#)

A. R. S. § 37-281, AZ ST § 37-281

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 4. Lease of State Lands \(Refs & Annos\)](#)

A.R.S. § 37-283

§ 37-283. Subleases by grazing lessee; limitation upon grazing use; sublease surcharge

[Currentness](#)

**A.** A grazing lessee shall not sublease his lease or sell or lease pasturage to lands included in his lease, without written permission from the state land department. A grazing lessee, his sublessee or users under pasturage agreement shall not graze, without written permission of the department, in excess of the carrying capacity as previously determined by the department, upon state lands under lease or being used by such persons, within the exterior boundaries of any one ranch unit or units in the same general locality jointly operated. If permission is granted for such excess, the department shall assess and collect the rental for the excess on the rental basis provided for in this article.

**B.** In addition to the annual rental on grazing lands established pursuant to [§ 37-285](#), grazing subleases are subject to a surcharge that is equal to twenty-five per cent of the annual rental on grazing land, multiplied by the number of animal unit months to be grazed on the subleased state trust land. The surcharge shall be assessed only for that period of time the state trust land is subleased. The surcharge shall be paid to the department when the annual rental is due, or upon receiving department permission to sublease if the sublease is approved after the annual rental is due.

#### **Credits**

Amended by Laws 1982, Ch. 189, § 2, eff. April 22, 1982; [Laws 1998, Ch. 184, § 4, eff. May 28, 1998](#).

#### [Notes of Decisions \(1\)](#)

A. R. S. § 37-283, AZ ST § 37-283

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[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 4. Lease of State Lands \(Refs & Annos\)](#)

A.R.S. § 37-285

§ 37-285. Rental rates for grazing and other lands; grazing land valuation commission; reclassification and reappraisal; definitions

Effective: July 29, 2010

[Currentness](#)

**A.** An agricultural, commercial or homesite lease shall provide for an annual rental of not less than the appraised rental value of the land, and never less than five cents per acre per year. The rental provided in such leases is subject to adjustment each year.

**B.** A grazing lease shall provide for an annual rental of the grazing land as computed under this section. All grazing land shall be classified and appraised on the basis of its forage and annual carrying capacity, measured in animal unit months. The annual rental rate for grazing land shall be the amount determined by multiplying the number of animal unit months to be grazed on the lands by the true value rental rate per animal unit month as established by the commissioner. The rental rate per animal unit month is the rental rate determined by the commissioner based on the recommendations of the grazing land valuation commission under subsection E of this section.

**C.** Before September 1, 1994, and at other times the commissioner may propose, but not more frequently than every five years, the governor shall appoint a grazing land valuation commission consisting of five members appointed by the governor pursuant to [§ 38-211](#). The commission shall serve for a period of one year from the date the members assume office during which period the commission shall complete the appraisal. The commission shall consist of the following members, each of whom shall have experience in analyzing and valuing the use of forage on grazing land:

1. One member who is a professional appraiser and who is certified in this state.
2. One member who is a professor and who serves on the faculty of the college of agriculture at the university of Arizona.
3. One member who is a retired employee of a financial institution that is actively engaged in agricultural lending.
4. One member who primarily derives income from livestock grazing and who does not hold a state lease.
5. One member who is a conservationist and who represents a natural resource conservation district in this state.

**D.** Each member of the grazing land valuation commission shall receive compensation at the rate of one hundred dollars for each meeting. Each member of the commission shall receive reimbursement for expenses pursuant to title 38, chapter 4, article 2.<sup>1</sup>

**E.** The grazing land valuation commission may employ a person who is experienced in analyzing and valuing the use of forage on grazing land and who, together with the members of the commission, shall gather the information that is necessary to prepare an appraisal to determine the true value of the use of forage on state grazing land and shall prepare this appraisal using both the market and income approaches. The appraisal report shall recommend a grazing fee that will equal the true value as recommended by the commission. The information and work products gathered in preparing the appraisal shall be available to the public. In determining the rental rate using the market approach the commission shall determine the typical lease of two years or more of private grazing land located in this state during normal years. The commission shall compare all factors that make up the bundle of rights and obligations in the typical private lease with the factors that make up the bundle of rights and obligations in the typical state lease. The commission shall document all adjustments, calculations and assumptions made in reaching a conclusion of true rental value for the state land grazing fee and shall determine economic benefit, burden or value attributable to each of these factors. These factors shall include the following:

1. All services, equipment and water rights provided by the lessor or lessee.
2. All improvements typically constructed and maintained to facilitate or enhance the use of the land for livestock grazing, wildlife, hunting or recreation.
3. All management and protection services that are typically provided.
4. The tenure, right to renew, assignability, right to reimbursement for improvements, responsibility for property taxes, right of others to share in the use of the land and ability to control access by others.
5. The size, location, accessibility, condition and carrying capacity of the land being leased and all related costs.

**F.** The commissioner's decision under this section may be appealed by any affected lessee to the board of appeals pursuant to [§ 37-215](#), and, except as provided in [§ 41-1092.08, subsection H](#), the decision of the board of appeals may be appealed to the superior court pursuant to title 12, chapter 7, article 6.<sup>2</sup>

**G.** The commissioner may make a reclassification or reappraisal, or both, at any time. If a reclassification or reappraisal, or both, is made pursuant to a request of a lessee, before expiration of the lease, the lessee shall pay a reclassification fee prescribed pursuant to [§ 37-107](#) plus the actual expenses incurred in making a reappraisal.

**H.** The department may authorize nonuse for part or all of the grazing use upon request of the lessee at least sixty days prior to the beginning of the billing date. The rental fee shall be based on the animal unit months used, but the total rental fee for partial or full nonuse shall not be less than five cents per acre per year.

**I.** For the purposes of this section:

1. “Animal unit” means one weaned beef animal over six months of age, or one horse, or five goats, or five sheep, or the equivalent.

2. “Animal unit month” means one animal unit grazing for one month.

#### **Credits**

Amended by Laws 1982, Ch. 189, § 3, eff. April 22, 1982; [Laws 1990, Ch. 114, § 7](#); [Laws 1994, Ch. 171, § 2](#); [Laws 1997, Ch. 221, § 172](#); [Laws 2000, Ch. 113, § 160](#); [Laws 2010, Ch. 243, § 13](#).

#### [Notes of Decisions \(12\)](#)

#### Footnotes

[1](#) Section 38-621 et seq.

[2](#) Section 12-901 et seq.

A. R. S. § 37-285, AZ ST § 37-285

Current through legislation effective July 6, 2022 of the Second Regular Session of the Fifty-Fifth Legislature (2022)

[Arizona Revised Statutes Annotated](#)

[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 4. Lease of State Lands \(Refs & Annos\)](#)

A.R.S. § 37-287

## § 37-287. Reservation of rights in state land leases

### Currentness

**A.** Unless the rights and interests described in this section are specifically included in a particular lease, all leases of state lands shall expressly except and reserve to the state:

1. All oils, gases, geothermal resources, coal, ores, minerals, fertilizer and fossils of every kind, which may be in or upon the land leased.
2. Any legal claim existing or which may be established under the mineral land laws of the United States or the state.
3. The right to enter upon the land for the purpose of exploring for those commodities or extracting any or all of such commodities from the land.
4. The right to relinquish to the United States lands needed for irrigation works in connection with a government reclamation project, and to grant or dispose of rights-of-way and sites for canals, reservoirs, dams, power or irrigating plants or works, railroads, tramways, transmission lines or any other purpose or use on or over the land.

**B.** The reservations of rights required in subsection A do not apply to existing or future leases under article 5.1 of this chapter,<sup>1</sup> except as required by the state constitution, the enabling act or the commissioner acting in the best interests of the state lands.

**C.** If the state reserves the rights described in subsection A, the lease shall provide for reasonable compensation to the lessee for any damage resulting from the exercise of those rights.

### **Credits**

Amended by Laws 1977, Ch. 87, § 5, eff. May 23, 1977; Laws 1987, Ch. 366, § 1, eff. May 22, 1987; [Laws 1998, Ch. 133, § 19](#); [Laws 2001, Ch. 276, § 8](#).

### [Notes of Decisions \(2\)](#)

### Footnotes

1 Section 37-331 et seq.

A. R. S. § 37-287, AZ ST § 37-287

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[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 10. Rights of Way and Sites for Public Uses](#)

A.R.S. § 37-461

§ 37-461. Grants of rights-of-way and sites for public uses

[Currentness](#)

**A.** The department may grant rights-of-way for any purpose it deems necessary, and sites for reservoirs, dams and power or irrigation plants, or other purposes, on and over state lands, subject to terms and conditions the department imposes. The department may make rules respecting the granting and maintenance of such rights-of-way and sites.

**B.** The department may grant rights-of-way for transportation purposes to federal agencies, state agencies or political subdivisions of this state for nonexclusive uses for a term exceeding ten years without a public auction. If a grant of a right-of-way or site to any other entity amounts to the disposition of or conveys a perpetual right to use the surface of the land, the department shall grant the right-of-way or site at public auction to the highest and best bidder.

**C.** The department may grant rights-of-way to any person for nonexclusive uses for a term of not more than fifty years without a public auction.

**Credits**

Amended by Laws 1973, Ch. 41, § 1; [Laws 1988, Ch. 82, § 1](#); [Laws 1997, Ch. 249, § 17](#); [Laws 1999, Ch. 209, § 10](#); [Laws 2002, Ch. 336, § 19](#).

[Notes of Decisions \(10\)](#)

A. R. S. § 37-461, AZ ST § 37-461

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[Title 37. Public Lands \(Refs & Annos\)](#)

[Chapter 2. Administration of State and Other Public Lands \(Refs & Annos\)](#)

[Article 14. Exchange of Public Lands \(Refs & Annos\)](#)

A.R.S. § 37-604

§ 37-604. Exchange of state land; procedure; limitation and exceptions; definition

Effective: December 13, 2012

[Currentness](#)

**A.** State land may be exchanged for public land in this state to improve the management of state lands for the purpose of sale or lease or conversion to public use of state lands or to assist in preserving and protecting military facilities in this state. Exchanges may be made for land owned or administered by other state agencies, counties, municipalities or the United States or its agencies. Exchanges with the United States or its agencies shall be in conformance with [§ 37-722](#), but the department shall also follow the procedures and requirements prescribed by [article X, section 12, Constitution of Arizona](#), subsection C, paragraph 7 of this section and the classification procedures in [§ 37-212](#).

**B.** The department shall adopt rules governing the application and procedure for the exchange of state land. Such rules shall include the following requirements:

1. The application shall include:

(a) The name, mailing address, telephone number and relevant affiliation, if any, of the applicant.

(b) A legal description of all lands to be considered for exchange.

(c) A list of permanent improvements on the state lands to be considered for exchange.

(d) A list of the leasehold interest in the state land to be considered for exchange.

(e) Accompanying agreements, if any, with the leaseholder or owner of improvements on the state land to be considered for exchange.

2. Payment of fees prescribed for that purpose pursuant to [§ 37-107](#).

3. Such additional requirements as the department determines to be necessary. On determining that the application is complete and correct, including payment of the required fees, and on completion of processing and analyzing the application, and on determining that the proposed exchange would benefit the applicable trust, the department shall notify and deliver a report

containing details of the proposed exchange to the president of the senate, the speaker of the house of representatives and the state legislators from the legislative districts in which the lands proposed to be exchanged are located.

C. Exchanges of state lands are subject to the following requirements:

1. The commissioner shall determine by at least two independent appraisals that the state lands being considered for exchange are of substantially equal value or of lesser value than the land offered by the applicant.

2. At least two independent analyses of the proposed exchange must be conducted to determine:

(a) The income to the trust from the lands before the exchange and the projected income to the trust after the exchange.

(b) The fiscal impact of the exchange on each county, city or town and school district in which all the lands involved in the exchange are located.

(c) The physical, economic and natural resource impacts of the proposed exchange on the surrounding or directly adjacent communities and the impacts on military facilities, local land uses and land use plans.

3. The commissioner may require the applicant to pay the cost of the independent appraisals and analyses required by this subsection.

4. No county or municipality may be permitted to select lands in another county or municipality.

5. State lands known to contain oil, gases and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer, in paying quantities, and state lands adjoining lands on which there are producing oil or gas wells, or adjoining lands known to contain any of such substances in paying quantities shall not be exchanged. These prohibitions against exchange shall not prevent the exchange of lands where the state does not own such substances, minerals or metals in the lands to be considered for exchange.

6. All state lands offered for trade pursuant to this section must be located in the same county as the lands offered to the state. However, lands in adjoining counties more than three miles outside the corporate boundaries of incorporated cities and towns having a population of ten thousand people or less and lands in adjoining counties but more than five miles outside the corporate boundaries of incorporated cities and towns having a population in excess of ten thousand people may be exchanged to facilitate consolidating land ownership if the boards of supervisors of the counties in which lands are to be exchanged give their prior approval.

7. Prior to public notice of a proposed exchange of state lands for other lands, the department shall give thirty days' notice in writing to other interested state agencies, counties, municipalities, the military affairs commission established by [§ 26-261](#), each military facility at the address on record at the department and to leaseholders on state lands that are to be exchanged and on state lands that are adjacent to the lands to be exchanged.

8. Before any state land may be considered for exchange under this article, the land shall be classified as suitable for such purposes in accordance with [§ 37-212](#). Any person adversely affected by such classification may appeal from the decision as provided in [§ 37-215](#).

9. After determining that the application is complete and correct and all required payments, appraisals and analyses have been completed, the department shall publish notice of the proposed exchange in the same manner and places as is required for the sale of state lands pursuant to [§ 37-237](#), except that the notice shall be published once each week for six consecutive weeks. The notice shall contain a legal description of the properties involved and other pertinent terms and conditions of the exchange. The department shall also schedule at least two public hearings on the exchange contemplated in the notice. One hearing must be held at the state capital and another hearing must be held in a location of general accessibility in the proximate vicinity of the state lands being exchanged. Any person may appear and comment on the proposed exchange at that time.

10. Within sixty days after the conclusion of the last hearing, the commissioner shall determine and issue a written finding recommending either that the exchange be denied or approved and shall transmit the finding to the governor, the president of the senate, the speaker of the house of representatives and the secretary of state.

**D.** Each exchange transaction must be approved by the qualified electors of this state in the form of a referendum submitted and conducted pursuant to [article IV, part 1, section 1, Constitution of Arizona](#), at the next regular general election. To be approved, the proposition must receive an affirmative vote of a majority of the qualified electors voting on the measure.

**E.** Lands conveyed to the state under this article shall, on acceptance of title and recording, be dedicated to the same purpose and administered under the same laws to which the lands conveyed were subject, but may be reclassified as provided in [§ 37-212](#).

**F.** This section applies with respect to the exchange of lands held in trust by this state pursuant to the enabling act and the Constitution of Arizona and does not apply with respect to any other state land under the jurisdiction of the department or the commissioner.

**G.** The provisions of this section do not diminish or otherwise affect the commissioner's fiduciary responsibilities with respect to lands held in trust by this state as provided by the enabling act and the Constitution of Arizona.

**H.** For the purposes of this section, “military facilities” includes:

1. Military airports, ancillary military facilities, military training routes, high noise or accident potential zones and territory in the vicinity as defined in [§ 28-8461](#).

2. Military reservations or other real property owned by, leased to, designated for, reserved to or under the jurisdiction of an active unit of the uniformed services of the United States or any reserve or national guard component of the uniformed services of the United States.

3. Military electronics ranges as defined in [§ 9-500.28](#).

4. Military restricted airspace identified pursuant to [§ 37-102](#).
  
5. The Barry M. Goldwater range as described in [§ 37-620, subsection D](#), paragraph 3.

**Credits**

Added by Laws 1971, Ch. 166, § 4. Amended by Laws 1973, Ch. 60, § 4; Laws 1975, Ch. 42, § 1; Laws 1976, Ch. 70, § 3; Laws 1986, Ch. 57, § 1; Laws 1986, Ch. 223, § 2, eff. April 29, 1986; Laws 1987, Ch. 368, § 1; [Laws 1988, Ch. 87, § 1](#); [Laws 1990, Ch. 114, § 8](#); [Laws 1992, Ch. 107, § 4](#); [Laws 2010, Ch. 243, § 16](#); [Laws 2012, Ch. 278, § 1, eff. Dec. 13, 2012](#).

A. R. S. § 37-604, AZ ST § 37-604

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**E.**

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON STATE LAND DEPARTMENT  
BI-MONTHLY PROGRESS UPDATE

Katie Hobbs  
Governor



Robyn Sahid  
Cabinet Executive Officer  
Executive Deputy Commissioner

## Arizona State Land Department

1110 West Washington Street, Phoenix, AZ 85007  
(602) 542-4631

February 5, 2024

Arizona Department of Administration  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, AZ 85007

Attn: Nicole Sornsins, Chairperson

RE: Arizona State Land Department's Stakeholder process update

Dear Chairperson Sornsins:

Pursuant to the request from GRRC Council Members to provide detailed information on the Department's stakeholder engagement relative to the current Proposed Rulemaking process for Articles 1, 7, 8, 9, and 11.

The Department engaged with 55 stakeholders which represented major stakeholder interest groups including, but not limited to, Appraisers, Agribusiness, Agriculture and Range Producers, Public Service Corporations, Municipalities and other Governmental Entities, Communications Providers, and Commercial Professional Groups, as an example.

While the Department has implemented a webpage process to receive comments, it is important to note that this webpage was activated after the Notice of Proposed Rulemaking was submitted to the Secretary of State's Office for publication. As such, the webpage location, and any reference to the webpage, has not been provided to the public for implementation. The Department did, however, advise the Stakeholders of the webpage being another alternative for them to use for the current Rulemaking Comment period, and continues to provide this webpage as another option for Stakeholders and members of the public to utilize in addition to email or written letter comments for future public comments. As of Feb 1, 2024, the Department has only been provided comments from stakeholders via email at the published rules@azland.gov address.

A timeline of activities is provided below, for the purpose of outlining the Department's activity relative to stakeholder engagement for Rulemaking.

1. The Notice of Proposed Rulemaking was published in the Arizona Administrative Register Volume 29, Issue 46 on Friday, November 17, 2023.

Katie Hobbs  
Governor



Robyn Sahid  
Cabinet Executive Officer  
Executive Deputy Commissioner

## Arizona State Land Department

1110 West Washington Street, Phoenix, AZ 85007  
(602) 542-4631

2. On Tuesday, November 21, 2023, a letter from the Executive Deputy Commissioner to 55 Stakeholders was sent to notify them individually to the Notice of Proposed Rulemaking was sent out to provide information that the Department had filed a Notice of Proposed Rulemaking, reiterating information provided on the Public Notice in the Register, and providing direct contact information for Lynn Córdova.
3. On Wednesday, November 22, 2023, an email to all 55 Stakeholders was sent to reiterate information on the Department's filing of the Notice of Proposed Rulemaking.
4. On Tuesday, November 28, 2023, an email and a mailed letter was sent out to all 55 Stakeholders notifying them that they should have received an email and a letter regarding the Department's proposed rulemaking and provided a reiteration of information sent to them regarding the proposed rulemaking the week prior. Further, they were all invited to attend either in-person or virtually an informal Stakeholder Meeting on Wednesday, December 6, 2023. They were provided with a link to the Department's RSVP site to receive the address, call in number, and/or virtual meeting link. Additionally, it was noted in bold that if the Stakeholder was unable to attend the meeting, they could still send written comments via email or mail.
5. On Friday, December 1, 2023, phone calls were placed to stakeholders reminding them of the upcoming stakeholder meeting. Additionally, during these calls, verification of receipt was made to ensure that the Stakeholder received the email and/or physical letter. If there was a need, contacts were updated as appropriate, communication was resent as appropriate, and a reminder was provided to those who indicated they received, but did not view the email.
6. On Monday, December 4, 2023, a secondary follow up phone call was made to those who were left messages by Department staff, but did not yet respond to the voicemail.
7. On Wednesday, December 6, 2023, 29 Stakeholders were in attendance at the informal Stakeholder meeting. While the team heard comments, the Stakeholders were encouraged to submit formal comments in writing.
8. Prior to the closing of the comment period on December 29, 2023, two stakeholders made contact with the Department, requesting an extension for comment due to Holiday schedules. The Department agreed to an extension that would not jeopardize the deadline of April 30, 2024 and issued a Notice of Public Information to extend the comment period for Rulemaking to Friday, February 2, 2024.

Katie Hobbs  
Governor



Robyn Sahid  
Cabinet Executive Officer  
Executive Deputy Commissioner

## Arizona State Land Department

1110 West Washington Street, Phoenix, AZ 85007  
(602) 542-4631

9. On December 26, the Department advised Stakeholders that the comment period for Rulemaking would be extended to 4:00 pm on Friday, February 2, 2024.
10. On December 29, 2023, a Notice of Public Information was filed in the Arizona Administrative Register, notifying the Public of the extension for public comment through 4:00 pm on Friday, Feb 2, 2024.
11. As of Friday, February 2, 2024 at 3:30 pm, the Department received 46 comments relative to current rulemaking and 2 comments requesting the extension due to the holidays, which prompted the extension to Feb 2, 2024.
12. The Department will discuss the stakeholder comments regarding the proposed rulemaking as agendaized per the Council.

Please feel free to reach out to Lynn Córdova at [lcordova@azland.gov](mailto:lcordova@azland.gov) or 602-542-2654 should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Robyn Sahid".

Robyn Sahid  
Cabinet Executive Officer  
Executive Deputy Commissioner

Katie Hobbs  
Governor



Robyn Sahid  
Cabinet Executive Officer  
Executive Deputy Commissioner

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February 26, 2024

Arizona Department of  
Administration Governor's  
Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite  
402, Phoenix, AZ 85007

Attn: GRRC Board Members

RE: Arizona State Land Department's Bi-Monthly Check-in

Dear GRRC Board Members:

The Arizona State Land Department (“Department”) is currently conducting major Rulemaking and Rule Review initiatives and continues to express its commitment to prioritizing the Rulemaking process with the Governor's Regulatory Review Council (“Council”), Department Stakeholders, and members of the Public.

The Department is celebrating its achievements in making wonderful progress, in advance of schedule, to meet the deadlines that GRRC has mandated. While continuing to meet the deadlines for both rule writing and rule review processes, the Department team charged with this effort is also working on standardizing and continuously improving our rule writing processes. We are pleased to provide this celebratory update to GRRC, while also working to ensure that we are producing work that meets statutory obligations.

The Department has put together a team of employees who are committed to the rulemaking process. This team has been working very hard to meet the expectations of the Council, despite the other work on their plate and strict deadlines approaching. It is a priority for the Department to rise to the challenges of this process, some of which were put into motion prior to the formation of the current rulemaking team. We continue to learn and strive to do our best to meet the goals set, and with that commitment we humbly ask that the Council grant us the grace to do the work.

At the Council's January 30, 2024 Study Session, several councilmembers expressed concern regarding the Department's Stakeholder outreach. The Department provided an outline of the activities which were conducted with Stakeholders, along with a list of Stakeholders who were contacted by the Department. Stakeholder outreach was conducted in the context of the Proposed Rulemaking Process, not regarding the Five Year Rule Reviews which were the items included on the Study Session agenda.

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At the Council's meeting on February 6, 2024, several councilmembers indicated their concern for the exclusion of Stakeholders who they believed would have an interest in the Proposed Rulemaking. Councilmembers noted that members of the Agriculture, Livestock and Mining trades were not included in the Stakeholder engagement for the current Proposed Rulemaking. The Department would like to highlight that it did include members of the above trades that were relevant to the articles and subject matter proposed for amendments, as noted below.

### Agriculture and Farming/Ranching/Livestock:

American Society of Farm Manager and Rural Appraisers  
Arizona Agribusiness and Water Council  
Arizona Beef Council  
Arizona Cattle Feeders' Association  
Arizona Cattle Growers Association  
Arizona Cotton Growers Association  
Arizona Farm and Ranch Group  
Arizona Farm Bureau  
Arizona Farm Bureau Federation  
Arizona Milk Producers  
Western Growers

Many of these Associations reached out to their membership to encourage review of the Proposed Rulemaking and to provide written comment. ASLD is also conducting concurrent Stakeholder initiatives and did not include these in the list provided to the Council. Those Stakeholders include members of the Arizona Mining Association and the Arizona Rock Products Association, who are currently working with the Department on a - significant continuous improvement project and will have direct impact on the Department's Articles 18, 19, 20, and 21.

In addition to the above, a Notice of Public Comment was published in the Administrative Register, Volume 29, Issue 46, Page 3588 on November 17, 2023. The initial deadline for the close of Public Comment was December 29, 2023 at 4:00 pm. Due to Stakeholder feedback, the Department filed an extension of Public Comment through February 2, 2024, at 4:00 pm, as published in the Administrative Register, Volume 29, Issue 52, Page 3958 on December 29, 2023.

The Department acknowledges councilmembers' feedback regarding the online portal. The Department created this portal in response to the Council's feedback in order to provide an additional, convenient option for submission of Public Comment. The portal was not in operation prior to Notice of Docket for rulemaking on Articles 7, 8, 9, and 11, however Stakeholders were provided the portal information. The portal enhances the Department's

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ability to receive comments from Stakeholders for both current and future rulemaking, and acts as an alternative to other available options such as email or written letter.

Recently, we submitted the Notice of Supplemental Proposed Rulemaking, which provides for some changes based upon stakeholder comments from the Notice of Proposed Rulemaking. We submitted the Notice of Supplemental Proposed Rulemaking to the Secretary of State's Office on February 16<sup>th</sup> for Publication in the Register on March 8<sup>th</sup>. The public comment period will remain open through 5:00 pm on Monday, April 15<sup>th</sup> and there will be a Public Oral Proceeding on Monday, April 15<sup>th</sup> at 11:00 am.

Please feel free to reach out to Lynn Cordova at [lcordova@azland.gov](mailto:lcordova@azland.gov) or 602-542-2654 should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Robyn Sahid".

Robyn Sahid  
Cabinet Executive Officer  
Executive Deputy Commissioner